# Ohio Rail Development Commission

50 West Broad Street, Suite 1510, Columbus, Ohio 43215
614-644-0306 (telephone) • 614-728-4520 (fax) • www.dot.state.oh.us/ohiorail


March 22, 2007

Dear Commissioners:

Briefing materials for the **Friday, March 30, 2007** Commission meeting are enclosed. You will find the minutes of the January meeting posted on ORDC's website at www.dot.state.oh.us/ohiorail.

The meeting will be held in the Vern Riffe Center, 31st floor, South B&C, beginning at 10:00 a.m.

If you haven't already done so, please contact Wende Jourdan to confirm your attendance. You may reach her at 614/728-9497 (telephone) or at wende.jourdan@dot.state.oh.us. We look forward to seeing you at the meeting.

Sincerely,

James E. Betts
Chair

enclosures

# THE OHIO RAIL DEVELOPMENT COMMISSION

## MEETING AGENDA

**Friday, March 30 at 10:00 a.m.**
**Vern Riffe Center for Government & the Arts**
**77 South High Street, 31st floor, Columbus, Ohio**

**CALL TO ORDER** – James E. Betts, Chairman

- Welcome
- Roll Call
- Approval of Minutes from January Meeting

**EXECUTIVE DIRECTOR / FINANCE REPORT** – Matt Dietrich

**PROJECTS FOR APPROVAL**

- Resolution 07-04: Marion Industrial Center – Lou Jannazo

**APPROVED PROJECT BRIEFINGS**

- Allen County (Alpla) – Lou Jannazo
- Cambridge Guernsey County CIC – Lou Jannazo

**OLD BUSINESS**

**NEW BUSINESS**

- 5-Year Renewal of Panhandle Rail Line Lease with the Columbus and Ohio River Rail Road Company

**PUBLIC COMMENT**

**EXECUTIVE SESSION** for consideration of permanent Executive Director – Jim Betts

**RECONVENE FROM EXECUTIVE SESSION**

**ADJOURN**

MEMORANDUM
March 30, 2007

TO: ORDC Commissioners

FROM: Matthew Dietrich

SUBJECT: Executive Director / Finance Report

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This document reflects the accomplishments and highlights of the Ohio Rail Development Commission since January 11, 2007.

- Budget season is upon us. The Transportation budget passed the House and is currently pending in the Senate. The transportation budget includes ORDC's safety and loan funds (anything but GRF funds). By the time of the Commission meeting it should be finalized. As you are aware, the Governor's Budget recommendations in the General Budget include a 4 million increase to the Rail Commission over the biennium increasing the proposed annual GRF budget to 4.7 million. In my discussions with OBM, the administration has been very explicit that they expect all of the increase to go into freight rail grant assistance. ORDC is scheduled to testify on behalf of its budget on April 3 at 7:00 pm

- At the request of Jim Betts, I attended Railroad Day on the Hill in Washington D.C. on March 14th. Lou Jannazo, who was already in Washington D.C. for the annual SCORT meeting, was also able to attend. Between the two of us, we covered most of Ohio's Congressional delegation. There are three major federal issues for railroads currently. The railroad industry is pursuing both a renewal of the shortline tax credit which expires on December 31 as well as a new 25% tax credit for new capacity which is primarily focused on Class 1 railroads. However, the overriding issue for the rail industry is the threat of re-regulation by Congress. Such an action would have huge impacts on Ohio. I believe that if a bill is introduced it is imperative for the ORDC to develop a position on the issue to provide to both the Governor's office and Ohio's Congressional delegation. Such a position would need to represent ORDC understanding that transportation is a cost of goods sold and not a profit center for shippers and railroads are private businesses that must make rationale business decisions.

- ORDC has entered into a $2,500 contract with PFM Group to undertake the work and activities to prepare the 15-year arbitrage rebate calculation for the Ohio Department of Transportation's 1992 Certificates of Participation. This fee includes preparation of the Form 8038-T required to be filed with the IRS and filing instructions if this issue has an arbitrage rebate liability. Unfortunately preliminary numbers suggest that there will be an arbitrage liability of approximately $25,000. This amount can not be confirmed until ORDC receives its 1st quarter account statements from the trustee.

- As in previous years, ORDC is providing a small grant to OPERATION LIFESAVER to cover the cost of a booth at the Ohio State Fair. The total grant amount is $1,300.

- The Lorain Port Authority has requested a support from the ORDC for its $1.5 million federal earmark request for the West Shore Corridor alternatives analysis.

- Ohi-Rail, the operator of the Piney Fork Rail line as requested that in lieu of its annual lease, the Commission consider a 5-year lease. Ohi-Rail stated that such action would be helpful and in some cases necessary in order for their company to invest in the line.

- The Toledo Port Authority, TMACOG and TAGNO sponsored a meeting for Alex Metcalf to discuss his ORDC-commissioned report, the Ohio Intermodal Rail Freight Growth Strategy Concept Study. The Toledo area representatives were concerned that the Northwest Ohio role in the report was limited and did not represent the true opportunities for the region. Commissioner Hartung, in his role as Port Director, is determining local interest in a localized more detailed study for Northwest Ohio. This activity would compliment the work of the Butler County Port Authority. If these study efforts are successful, I would anticipate an updated Phase 2 report sometime next fiscal year that would incorporate local plans as well as many of the current and proposed intermodal projects such as Marion Industrial Center on the agenda today.

- I presented an update of the Ohio Hub Plan to All Aboard Ohio as part of its Legislative Day in Columbus on March 7th. The event was well attended and the presentation was well received.

- The Indiana Eastern Railroad was approved at the November meeting for a $500,000 loan. Since that approval, the railroad has requested a reduction of scope of the project to $186,495. Staff reviewed the request and concurred with the railroad.

- Upon invitation of the Ohio Association of Regional Councils (OARC) I participated in their Cabinet Roundtable session of their Legislative Day with other administrative agencies including representatives from ODOD and ODOT. This year OARC issued a transportation policy agenda. Much of this agenda is in tune with the activities of the ORDC. Of note are two items. OARC states that "Ohio needs to advance the "Ohio Hub Plan" and support the "Midwest Regional Rail Compact" for improved passenger rail throughout the state and to destinations in surrounding states" and a desire for ODOT to "expand its emphasis beyond a highway-only focus and establish a credible presence in all modes and direct attention to multi-modal connections."

- I met with ORDC's new legislative representatives Representative Flowers and Senator Cafaro. Additionally I met with Senator Mumper to discuss ORDC's role in the public financing of ethanol projects.

- RRIF Loan Update: The Federal Railroad Administration has selected a financial advisor, the Seneca Group, as the financial advisor to review the ORDC application. ORDC is in the process of transferring the request fees, $16,500 from the ORDC loan fund (4N4). The rationale behind using the 4N4 fund is that, if ORDC is successful in its application, the release of the Panhandle Reserve fund will be available for loans.

- Loans in process: Shenandoah Valley Reality, Indiana & Eastern Railroad, Warrenton River Terminal, Farmers Ethanol, Medina County, Wheeling & Lake Erie – Benwood Bridge, WESTCO.

- Grants in process: Cleveland Commercial Railroad (2), Coshocton Ethanol, Crane Plastics, City of Lima, Ohio Central – Mt. Vernon Line, Operation Lifesaver, Samuel Manu-Tech, WESTCO, Farmers Ethanol, Warrenton River Terminal, Butler County Port Authority, City of Medina, Ohio Central – Grand River Lease, Norfolk Southern, Ohio Central – McCluney Trestle, US Rail (2), Wheeling & Lake Erie – Benwood Bridge, Whirlpool, Ohio Central – Mahoning Bridge, Shenandoah Valley Reality.

- Active Personal Service Contracts: Seasongood Mayer, Capital Partnerships, Rea, Cross & Auchincloss, Roetzel & Andress, Highway Railroad Safety Consulting.

- Financial Statements prepared for March 2007.

- Excluding payroll, from July 1, 2006 to February 28, 2007, ORDC has collected a total of $675,695.04 and has expended $285,499.21.

## OHIO RAIL DEVELOPMENT COMMISSION: March 30, 2007 Finance Report

**GENERAL REVENUE FUND (GRF) APPROPRIATION AUTHORITY**
**March 2007 - Fiscal Year 2007**

| | | | |
|---|---|---|---|
| **GRF APPROPRIATION AVAILABLE FOR PROJECTS AND PERSONAL SERVICE CONTRACTS** | | | |
| *GRF APPROPRIATION FOR PROJECTS* | | | **1,700,000** |
| LESS: PROJECTS ENCUMBERED or DISBURSED | 1,022,810 | | |
| *LESS: PROJECTS APPROVED BUT NOT ENCUMBERED* | | | |
| Farmers Ethanol | 200,000 | | |
| *TOTAL* | *1,222,810* | *-1,222,810* | |
| *PROPOSED GRF COMMITMENTS FOR FY 2007* | | | |
| Allen County (Apla) | 75,000 | | |
| Marion Industrial Center | 150,000 | | |
| Cambridge-Guernsey CIC | 25,000 | | |
| *TOTAL* | *250,000* | *-250,000* | |
| ***BALANCE OF GRF APPROPRIATION FOR PROJECTS*** | | | ***227,190*** |
| ***GRF APPROPRIATION FOR PERSONAL SERVICE CONTRACTS*** | | | **75,000** |
| *GRF COMMITMENTS FOR FY 2007 TO DATE* | 85,653 | | |
| PFM Group | 2,500 | | |
| *TOTAL* | *88,153* | *-88,153* | |
| ***BALANCE OF GRF APPROPRIATION FOR PERSONAL SERVICE CONTRACTS*** | | | ***-13,153*** |
| **RAIL TRANSLOAD FUNDS AVAILABLE FOR FY 2007** | | | **200,000** |
| ***BALANCE OF TRANSLOAD FUNDS FOR PROJECTS*** | | | *200,000* |
| **FUND 3B9 (FEDERAL) AVAILABLE FOR FY 2007** | | | **4** |
| **RAIL FUND 4N4 - REVOLVING LOAN FUND** | | | **6,012,654** |
| *LESS: OPEN ENCUMBRANCES* | 825,000 | | |
| *LESS: PANHANDLE RESERVE FUND* | 764,400 | | |
| *TOTAL* | *1,589,400* | | *-1,589,400* |
| **FISCAL YEAR 2007 APPROPRIATION** | | **2,111,500** | |
| *LESS: PAYROLL FROM LOAN AND LICENSE FEES (Budgeted)* | 132,218 | | |
| *LESS: OPEN ENCUMBRANCES FY 2007* | 200,000 | | |
| *LESS: PROJECTS APPROVED BUT NOT ENCUMBERED* | | | |
| Indiana & Eastern Railroad | 186,495 | | |
| Medina County | 81,375 | | |
| Farmers Ethanol | 500,000 | | |
| West Central Ohio Port Auhority | 513,000 | | |
| *TOTAL* | *1,613,088* | *-1,613,088* | *-1,613,088* |
| *Proposed 4N4 Commitments for FY 2007* | | | |
| *FRA RRIF Fee* | *16,500* | | |
| *Marion Industrial Center* | *300,000* | | |
| *TOTAL* | *316,500* | *-316,500* | *-316,500* |
| *APPROPRIATION BALANCE OF FUND 4N4 AVAILABLE FOR PROJECTS* | | *181,912* | |
| *BALANCE OF FUND 4N4 AVAILABLEW/ CONTROLLING BOARD APPROVAL* | | | *2,493,666* |
| **TOTAL ORDC FUNDS AVAILABLE FOR PROJECTS - FY 2007** | | **484,106** | |

**ORDC - Loan Payback (Active Loans)**
March 1, 2007

| | Loans | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 | Application, Loan, Interest & Admin. Fees | Total Payments |
|---|---|---|---|---|---|---|---|---|---|---|---|
| FY01 Walton Agri-Service ** | $460,551 | $6,863 | | | | | | | | *$46,174* | *$506,725* |
| FY01 BG Foundation ** | $115,000 | $1,698 | | | | | | | | *$12,640* | *$127,640* |
| FY01 Graves Lumber ** | $26,000 | $951 | | | | | | | | *$4,110* | *$30,110* |
| FY02 W&LE (Nickles Bakery) ** | $265,500 | $28,234 | | | | | | | | *$27,254* | *$292,754* |
| FY02 City of Jackson (Warehouse)** | $143,599 | $15,660 | | | | | | | | *$16,989* | *$160,588* |
| FY02 City of Jackson (Rehab)** | $123,501 | $17,469 | | | | | | | | *$21,719* | *$145,220* |
| FY03 Cloverleaf Cold Storage * | $328,000 | $68,245 | $33,662 | | | | | | | ***$14,900*** | ***$342,900*** |
| FY03 Portage Cty Solid Wst Mgmt. * | $80,000 | $16,206 | $16,495 | $16,495 | $16,495 | $9,622 | | | | ***$3,279*** | ***$83,279*** |
| FY04 Ann Arbor Railroad * | $768,736 | $162,274 | $162,274 | $81,137 | | | | | | ***$42,295*** | ***$811,031*** |
| FY04 Columbiana County Port Authority * | $2,098,047 | $224,884 | $297,880 | $296,039 | $300,583 | $305,126 | $305,126 | $305,126 | $152,563 | ***$110,779*** | ***$2,208,826*** |
| FY04 W&LE (Valley Line)* | $400,000 | $10,680 | $10,680 | $408,900 | | | | | | ***$57,277*** | ***$457,277*** |
| FY04 Maumee & Western * | $199,088 | $28,191 | $29,392 | $29,502 | $29,502 | $29,502 | $17,209 | | | ***$8,460*** | ***$207,548*** |
| FY05 Seneca-Sandusky-Tiffin Port Auth* | $290,000 | $60,681 | $61,217 | $61,217 | $61,217 | $10,203 | | | | ***$16,267*** | ***$306,267*** |
| FY05 Ashland RW (Mansfield Yard Rehab)* | $500,000 | $106,935 | $106,935 | $106,935 | $106,935 | $8,911 | | | | ***$41,285*** | ***$541,285*** |
| FY05 I&O (Fulton County Processing, Ltd)* | $242,335 | $52,681 | $52,681 | $52,681 | $52,681 | $8,780 | | | | ***$24,266*** | ***$266,601*** |
| FY06 Portage County Rail Line (Smurfit Stone)* | $20,000 | $4,348 | $4,348 | $4,348 | $4,348 | $2,174 | | | | ***$2,489*** | ***$22,489*** |
| FY06 Cleveland Commercial Railroad** | $16,421 | $14,933 | | | | | | | | *$700* | *$17,121* |
| FY06 Shenandoah Valley Realty *** | $650,000 | $97,500 | $140,978 | $144,637 | $144,637 | $144,637 | $36,159 | | | ***$65,550*** | ***$715,550*** |
| | **$6,726,778** | **$918,431** | **$916,542** | **$1,201,890** | **$716,396** | **$518,955** | **$358,494** | **$305,126** | **$152,563** | ***$516,432*** | ***$7,243,210*** |

**Loan Amount Received to Date:** **$592,813**
**Loan Balance Due:** **$228,118**

* Loans Closed (Active)
** Loans Paid Off
***Loans in Process

OHIO RAIL DEVELOPMENT COMMISSION
APPROPRIATION LEDGER
For Month Ending February 28, 2007

| FUND | SAC | FEDERAL STATE/OTHER | ORIGINAL APPROPRIATION | TRANSFERS | UNASSIGNED | ADJUSTED APPROPRIATION | OPEN ENCUMBRANCES | TOTAL DISBURSED | UNENCUMBERED BALANCE | PERCENT UNOBLIGATED | SAC DEFINITION |
|---|---|---|---|---|---|---|---|---|---|---|---|
| GRF | 4FA5 | STATE | 850,000.00 | 0.00 | 0.00 | 850,000.00 | 606,510.00 | 0.00 | 243,490.00 | 28.65% | GRANT (Community/Railroad) - SUBSIDY |
| GRF | 4FA7 | STATE | 850,000.00 | 0.00 | 0.00 | 850,000.00 | 331,300.00 | 30,000.00 | 488,700.00 | 57.49% | GRANT (Private Industry) - CAPITAL |
| GRF | 4651 | STATE | 761,782.00 | 0.00 | 0.00 | 761,782.00 | 27,781.80 | 429,715.78 | 304,284.42 | 39.94% | PAYROLL / PERSONAL SERVICE |
| GRF | 4652 | STATE | 235,718.00 | 0.00 | 0.00 | 235,718.00 | 21,414.00 | 184,273.20 | 30,030.80 | 12.74% | OFFICE EXPENSE |
| GRF | 4653 | STATE | 2,500.00 | 0.00 | 0.00 | 2,500.00 | 1,568.00 | 388.56 | 543.44 | 21.74% | OFFICE EQUIPMENT |
| GRF | 4665 | STATE | 789,600.00 | 0.00 | 0.00 | 789,600.00 | 149,300.00 | 181,000.00 | 459,300.00 | 58.17% | ODOT GRADE SEPARATION |
| | **FUND TOTAL** | | **3,489,600.00** | **0.00** | **0.00** | **3,489,600.00** | **1,137,873.80** | **825,377.54** | **1,526,348.66** | **43.74%** | **FUND TOTAL - GRF** |
| 002 | 4FN7 | FEDERAL | 1,515,375.00 | 3,837,924.28 | 0.00 | 5,353,299.28 | 52,898.52 | 282,589.36 | 5,017,811.40 | 93.73% | GRADE CROSSING PAVEMENT |
| 002 | 4FP1 | FEDERAL | 484,625.00 | 17,000.00 | 0.00 | 501,625.00 | 0.00 | 326,270.53 | 175,354.47 | 34.96% | GRADE CROSSING SAFETY'S PAYROLL |
| 002 | 4FP7 | FEDERAL | 11,000,000.00 | 5,851,309.97 | 0.00 | 16,851,309.97 | 9,206,347.70 | 1,262,694.63 | 6,382,267.64 | 37.87% | GRADE CROSSING DEVICES |
| | **FUND TOTAL** | | **13,000,000.00** | **9,706,234.25** | **0.00** | **22,706,234.25** | **9,259,246.22** | **1,871,554.52** | **11,575,433.51** | **50.98%** | **FUND TOTAL - 002** |
| 3B9 | 8FB5 | FEDERAL | 10,000.00 | 0.00 | 0.00 | 10,000.00 | 0.00 | 0.00 | 10,000.00 | 100.00% | FEDERAL RAIL - SUBSIDY |
| | **FUND TOTAL** | | **10,000.00** | **0.00** | **0.00** | **10,000.00** | **0.00** | **0.00** | **10,000.00** | **100.00%** | **FUND TOTAL - 3B9** |
| 4N4 | 6FC9 | LOCAL | 1,972,782.00 | (37,870.00) | 0.00 | 1,934,912.00 | 0.00 | 6,556.25 | 1,928,355.75 | 99.66% | RAIL TRAN - LOANS |
| 4N4 | 6FD9 | STATE | 764,400.00 | 0.00 | 0.00 | 764,400.00 | 0.00 | 0.00 | 764,400.00 | 100.00% | PANHANDLE LEASE PAYMENT |
| 4N4 | 6111 | LOCAL | 132,218.00 | 37,870.00 | 0.00 | 170,088.00 | 0.00 | 107,049.04 | 63,038.96 | 37.06% | PAYROLL(PROPERTY MGNT) |
| 4N4 | 6112 | LOCAL | 6,500.00 | 0.00 | 0.00 | 6,500.00 | 0.00 | 2,170.00 | 4,330.00 | 66.62% | OHIO HUB WORKSHOP |
| | **FUND TOTAL** | | **2,875,900.00** | **0.00** | **0.00** | **2,875,900.00** | **0.00** | **115,775.29** | **2,760,124.71** | **95.97%** | **TOTAL - OTHER ASSISTANCE** |
| | **GRAND TOTAL** | | **19,375,500.00** | **9,706,234.25** | **0.00** | **29,081,734.25** | **10,397,120.02** | **2,812,707.35** | **15,871,906.88** | **54.58%** | |

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**City of Mentor**

Council-manager
government since 1963

8500 Civic Center Boulevard
Mentor, Ohio 44060-2499
440-255-1100
www.cityofmentor.com

March 7, 2007

Mr.Matt Dietrick
Asst Executive Director
Ohio Rail Development Commission
50 W. Broad St., Ste 1510
Columbus, OH 43215

RE: Case No. 04CV000503
The City of Mentor (Plaintiff) vs.
Norfolk Southern Railway Co. (Defendant)
CSX Transportation, Inc. (Defendant)

Plaza Blvd. Extension At-Grade Railroad Crossing

Dear Mr. Dietrick::

Pursuant to the above-referenced court case and in accordance with the Consent Order signed by Judge Eugene A. Lucci (attached), the City of Mentor would like to initiate step one of the Consent Order, the "Diagnostic Review".

In accordance with the Order "Representatives from CSXT and NSR (the Railroads), the City's administration and engineering consultants, and representatives from the Ohio Rail Development Commission (ORDC) and the Public Utilities Commission of Ohio (PUCO) will first participate in a diagnostic review of the at-grade crossings to consider the layout of the traffic control devices for the two crossings. The Railroads' representatives will assist with the review and discussion of the technical issues related to the projects. The diagnostic review will include federal and state requirements and other recommended practices that may be appropriate for the location and operation of highway-rail grade crossing warning systems proposed at the crossings." In an effort to coordinate the Diagnostic Review, the City of Mentor is requesting that you provide to us the name, title, phone number and email address of a contact person from your organization who will participate in this required process. In an effort to continue moving this project forward in a timely manner, please provide this information as soon as possible.

The City looks forward to working with all parties involved with this very important infrastructure improvement.

Very truly yours,

David A. Swiger, P.E.
City Engineer

DAS:llk
Attachment
Cc: Mr. Clyde C. Hadden, P.E., CT Consultants
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91430-105423
JJS:sap
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LYNNE L. MAZEIKA
LAKE CO CLERK OF COURT

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

| | | |
|---|---|---|
| THE CITY OF MENTOR,<br><br>Plaintiff<br><br>vs.<br><br>NORFOLK SOUTHERN RAILWAY CO.,<br>Defendant | ) | CASE NO. 04CV000503<br><br>JUDGE: EUGENE A. LUCCI |
| THE CITY OF MENTOR<br><br>Plaintiff<br><br>vs.<br><br>CSX TRANSPORTATION, INC.<br><br>Defendant | ) | CASE NO. 04CV000510<br><br>JUDGE: EUGENE A. LUCCI<br><br>CONSENT ORDER |

The parties to the above-captioned cases, the City of Mentor (the "City"), CSX Transportation, Inc. ("CSXT"), and Norfolk Southern Railway Company ("NSR"), agree that the following are the steps that the City, CSXT and NSR will take in designing and constructing the at-grade crossings at Plaza Boulevard in Mentor, Ohio. The parties agree that the following steps will be taken pursuant to and in accordance with Judge Eugene A. Lucci's May 28, 2003 Judgment Entry in Lake County Case Nos. 00CV001662 and 00CV001663, as well as Judge Lucci's August 31, 2006 Judgment Entry in Lake County Case Nos. 04CV000503 and 04CV000510 (the "Judgment Entries").

10

The parties further agree that Judge Lucci shall retain jurisdiction over the enforcement and implementation of this Consent Order, to ensure compliance with the Judgment Entries, and to resolve any and all disputes that may arise under the terms of this Consent Order. The steps are as follows:

- Representatives from CSXT and NSR (the "Railroads"), the City's administration and engineering consultants, and representatives from the Ohio Rail Development Commission ("ORDC") and the Public Utilities Commission of Ohio ("PUCO") will first participate in a diagnostic review of the at-grade crossings to consider the layout of the traffic control devices for the two crossings. The Railroads' representatives will assist with the review and discussion of the technical issues related to the projects. The diagnostic review will review federal and state requirements and other recommended practices that may be appropriate for the location and operation of highway-rail grade crossing warning systems at the crossings.

- Based on the diagnostic review, the City's administration and engineering consultants, in coordination with the ORDC and PUCO, will determine what traffic control devices will be installed at the crossings, the location of each device, as well as the timing for the activation and operation of traffic control devices such as flashing lights, gates, and any other warning devices. This determination will specify any interconnection of the two warning systems that will operate the railroad traffic control devices specified. The City's administration and engineering consultants, the ORDC, and PUCO will also review and determine if additional traffic control devices are required because of potential vehicle traffic backup across the crossings.

- The City will provide design plan and profile drawings for the crossings to be used by the railroads to complete the engineering work.

- The Railroads will authorize a General Engineering Consultant to review the proposed work by the City or City contractors on railroad property, prepare the bill of material for and estimate the cost of the installation of the highway-rail grade crossing surface and other work in addition to the warning system.

- The Railroads will review the determinations from the City's administration and engineering consultants and authorize a Signal Engineering Consultant to complete a field survey of the existing railroad signal equipment, design, and estimate the cost for the warning systems using railroad current standards. The Railroads will consult with the City's administration and engineering consultants concerning any technical questions and possible limitations of available signal equipment related to the determinations such as the amount of advanced activation. The completed designs and estimates will be submitted to the City for review, approval and authorization for construction.

- The Railroads will conduct the work on their tracks, and the City will pay for the Railroads' labor, overhead costs, material and equipment to install the crossing surface and warning system. The crossing surface is usually installed before the approach paving, the sequence

of which is agreed to by the City.

- The Railroads will prepare agreements for execution by the City and the Railroads for the review, design, estimation, construction, construction supervision, and flagging required to be done by the Railroads as part of the projects. These agreements must be executed and the Railroads expressly authorized to start work before the Railroads begin these tasks, before the City or City contractors can enter railroad property, and before the at-grade crossings can be opened for highway traffic. The agreements will also include the process for payment by the City for these tasks.

- In exchange for and in consideration of the City's agreement to the terms of this Consent Order, the Railroads hereby agree to dismiss their respective appeals that are currently pending in Eleventh District Court of Appeals Case Nos. 2006-L-206 and 2006-L-208 with prejudice.

APPROVED BY:

**PATRICK J. KREBS (0070828)**
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Law Director for Plaintiff City of Mentor

**JAMES A. WASHBURN**
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303 Peachtree Street, NE, Suite 5300
Atlanta, GA 30308

Attorney for Defendant CSX Transportation,Inc.

IT IS SO ORDERED.

HONORABLE EUGENE A. LUCCI

Date: 5-1-07

# ACCOMPLISHMENTS REPORT
# PLANNING, PROJECT DEVELOPMENT, AND TRACK INSPECTION
January 2 to March 19, 2007

| PLANNER | DEVELOPMENT SPECIALISTS |
|---|---|
| **Don Damron** | **Lou Jannazo** |
| | **Bev Lee** |

## TRACK INSPECTION

- Inspection trip/field survey of Akron Metro Hudson to Cuyahoga Falls line including connections with NS (Hudson) and CSX (Cuyahoga Falls) to investigate possible line reactivation.

## ADMINISTRATIVE

- Helped prepare agendas and briefing packets for March 30, 2007 meeting.
- Developed grant agreements for projects approved at January meeting.
- Did grant agreement amendments to extend time for select projects and to reflect changes in scopes of work.
- Did OEPA and Ohio Taxation background checks on January grant recipients.
- Performed Panhandle Shippers Surveys as mandated by ORDC – C&OR Operating Agreement as condition of 5 year renewal.
- Gathered and analyzed safety performance data for C&OR as well as all Class I railroads; compared C&OR safety performance with Class I performance as required by Operating Agreement for 5 year renewal.

## TRAINING

- No activity this period.

## FREIGHT PROJECT DEVELOPMENT AND IMPLEMENTATION

***New Project Development/Continued Project Development***

- Continued work and investigations into various ongoing spur project proposals including Spartech in Greenville and Alpla in Lima. Wrote commitment to Allen County for Alpla project.
- Began investigations into new spur projects including Appleton Papers in West Carrollton, Unique Stone in Cleveland, and others. Wrote commitment letter to Appleton Papers.
- Continued coordinating with CSX and local officials on planned CSX "Swap Yard/Intermodal Terminal in northwest Ohio.
- Continued pursuing new project investigations for various transload projects including Meigs County/Hobson on NS, a stone terminal along the Hudson to Cuyahoga Falls line, a coal transload for Hamden (US Rail) and a coal transload in Wellsville (Buckeye Industrial Mining).
- Developed the Alpla Inc/Allen County spur project, Marion Intermodal expansion, Tuscarawas County Port Authority/Plymouth Foam spur project, Andersons Greenville spur project, and Cambridge – Guernsey CIC/Byesville Scenic siding project projects for the March Commission Meeting.
- Continued investigating potential Rehabilitation Program project for the RJ Corman Dover Line.
- Investigating new, small rehabilitation project on ORDC owned Piney Fork.
- Continued to support Ohio Central Mt. Vernon to Newark rail line rehabilitation project by helping with crossing closure meeting and getting a final scope of work for crossing repairs.

- Working with Akron Metro (line owner), US Rail (line operator), NS and CSX (potential connecting carriers, and others on efforts to reactivate the Cuyahoga Falls to Hudson rail line for stone, steel, and transload traffic.
- Working with W&LE (line owner), Ohi-Rail (line operator), Carroll County, rail line shippers, and others on getting the Robertsville Tunnel on the Carrollton Branch repaired or daylighted, getting other needed track repairs done, and ensuring continued operations to Carrollton.
- Working with local officials on new Broin Ethanol facility in Fostoria.
- Investigated project for rail – river bulk transload in Cincinnati.
- Worked with potential rail user and Ohio Central on keeping the abandoned and out of service CSX 2.1 mile long Grand River to Painesville line under lease for another year to Ohio Central to preserve it for the future.

**PASSENGER PLANNING**

***Ohio Hub***

- Reviewed TEMS Draft Final Technical Report on Ohio Hub. Compiled comments and sent to TEMS for revisions.
- Reviewed TEMS Draft Final "global" Economic Impacts Report for Ohio Hub. In process of compiling comments to send to TEMS.
- Continued coordination with GEM consultants working on the "local" Economic Impacts study of the Ohio Hub.
- Continued work and coordination with other states and railroads on Ohio Hub Study.
- Continued with various meetings and presentations on Ohio Hub plan including presentation at All Aboard Ohio railroad day.

***Other Passenger Initiative***

- Continued coordination with the MWRRI study effort.
- Continued supporting local efforts to develop stations and promote Ohio Hub, particularly in Cincinnati and Toledo.
- Kept abreast of passenger issues in across Ohio and nationally through participation in the States for Passenger Rail.
- Attended meetings on new effort to get commuter rail or light rail going between Lorain and Cleveland.
- Don Damron is part of MWRRI team working on the Scope of Work for a PEIS for the Midwest Regional Rail network.

**OTHER PLANNING INITIATIVES**

- Continued coordinating with ODOT on a new "Freight Railroad Bottleneck Study".
- Participated in AASHTO Standing Committee on Railroad Transportation (SCORT) efforts to put out new "Rail Freight Bottom Line Report". Also working on SCORT committee looking at extension of existing short line tax credits and the proposed new Class I railroad tax credits.
- Represented Ohio at annual SCORT meeting in Washington DC.
- Continued monitoring "Clean Diesel" issues as they might relate to Ohio railroads obtaining Congestion Mitigation & Air Quality (CMAQ) funding for a variety of clean diesel devices.
- Reviewed the Butler County TEMS report promoting new intermodal terminal in Butler County.

**MISCELLANEOUS**

- Continued investigations and coordination for a two mile NS exempt abandonment in Sheffield (Lorain County). Lorain County wants to buy the right-of-way for various purposes but NS rescinded its Notice of Abandonment. ORDC supporting local efforts to buy property for possible future rail uses.
- Informed public officials of NS plans to discontinue service (NOT ABANDON, JUST RAILBANK) on its Alliance to Lordstown branch.

**SAFETY**

- Helped Safety Section with work on Ohio Central Mt.Vernon to Newark to evaluate crossing closures and obtain crossing surface repair funds.

WPDOCS/AccomplishmentsCommission

# OHIO RAIL DEVELOPMENT COMMISSION
# INTER-OFFICE COMMUNICATION

**TO:** **Matthew Dietrich, Acting Executive Director**

**FROM:** **Susan J. Kirkland, Manager, Grade Crossing Safety Section**

**SUBJECT:** **Safety Section Progress Report**

**DATE:** **March 21, 2007**

==========

The following major objectives were met by the Safety Section during the last several months:

- ORDC has identified three crossings on the NS CD (Chicago line) that are only equipped with crossbucks. This corridor was addressed as one of the first during the Conrail merger. The three crossings were identified for closure and somehow overlooked by NS. The crossings are currently being pursued for closure by both the ORDC and NS.
  Williams County TR 163 509561A
  Ottawa County TR 62, James Rd. 509404G
  Ottawa County West Street 509396S
- The ORDC and PUCO completed diagnostics reviews for 20 crossings in December, 2006. 16 crossings were identified to be upgraded. Funds have been encumbered for the projects.
- Ohio's first 4-quadrant gate installation is nearly completed in the Village of Loveland in Clermont County. The crossing is SR 48 on the Indiana and Ohio Railroad. The warning device cut-in has been delayed but should be in place in early spring.
- The second segment of the Norfolk Southern Corridor from Columbus to Cincinnati is being initiated. The City of Miamisburg will be the next segment to be addressed.
- A meeting has taken place between the Ohio Railroad Association and the ORDC concerning the phase out of the Buckeye Crossbucks and the future application of yield or stop signs to standard crossbucks. A task force will be formed to develop a plan for the process.
- Safety Section staff conducted a public meeting involving three communities on the Ohio Central Mt. Vernon Line. The meeting was a venue to discuss the rehabilitation of the line and begin negotiations for several closures on the line.
- The Safety Section has solicited candidate projects for all ODOT Districts for the 2007 Surface Reconstruction Program. The railroads participating in the program have been contacted to select specific projects.
- ORDC is moving forward on the FRA grant for approximately $500,000 to improve circuitry on Ohio high speed designated corridors. NS and the ORDC have identified several crossings on the CD (Chicago line) for potential improvement. Final candidates will be submitted to the FRA before March 31, 2007.
- A series of safety related railroad projects has been assigned funds by congressional set-asides in the "SAFETEA-LU" transportation bill. Two of the set-asides are on Norfolk Southern and involve seven (7) grade crossings. All are proposed circuitry upgrades. All seven (7) crossings are on the NS Chicago Line and are outlined below.

The Safety section is setting up the project.

| COUNTY | LHA | ROAD | AAR-NO | 2002 ESTIMATE | 2004 ESTIMATE |
|---|---|---|---|---|---|
| Cuyahoga | Berea | Sheldon Rd. | 523 940J | $ 160,590.00 | $178,940.00 |
| Lorain | Ridgeville | Chestnut Ridge | 523 844G | $ 237,652.00 | $264,810.00 |
| Lorain | Ridgeville | Root Rd. | 523 845N | $ 132,394.00 | $147,520.00 |
| Lorain | Ridgeville | Maddock Rd. | 523 847C | $ 202,884.00 | $226,100.00 |
| Lorain | Elyria | Race Rd. | 523 848J | $ 154,866.00 | $172,560.00 |
| Lorain | Elyria | Olive St. | 523 851S | $ 221,328.00 | $246,620.00 |
| Lorain | Elyria | Murray Ridge Rd. | 523 861X | $ 136,634.00 | $161,600.00 |
| | | | | *$1,246,348.00* | *$1,398,150.00* |

# PROJECT BRIEFING
# MARION INDUSTRIAL CENTER (MIC)
# INTERMODAL FACILTIY – PHASE II

March 20, 2007

| Project Costs | | Project Benefits |
|---|---|---|
| * ORDC Loan | $300,000 | * Helps expand from 60,000 to 90,000 Units/Yr. |
| * ORDC Grant | $150,000 | * New Development Possible on 1,200 Acres |
| | | * New Transportation Option for Area Business |
| | | * Five New Jobs at MIC |

## INTRODUCTION

The Marion Industrial Center (MIC) requested grant and loan assistance to purchase, transport, and rehabilitate a used overhead crane to handle rapidly expanding intermodal Trailer on Flat Car (TOFC) and Container on Flat Car (COFC) service between Kansas City and Marion. ORDC staff recommends providing a $150,000 grant and a $300,000 loan. The terms for the loan would be a five year term, 0% interest in year one, six months deferred payment on principal, 2/3 of prime rate interest for years two through five, and a Letter of Credit or sufficient collateral to back the loan as determined by the Executive Director.

## BACKGROUND

***Description of the Marion Intermodal Facility:*** The MIC is a 186 acre, 1.3 million square foot complex located in Claridon Township along SR 309 near Marion. It is a former Department of Defense Engineering Depot now used for warehousing, manufacturing, and other uses. There are hundreds of truck docks along about 1.5 miles of frontage on SR 309. The rail infrastructure is extensive behind the facility including about 8 miles of rail tracks. This extensive rail yard is connected to the CSX mainline between Ohio, Indianapolis and St. Louis (the former Conrail mainline to St. Louis) with a "wye" connection so that trains can exit or enter the MIC from either direction. The MIC currently has two switch locomotives. An aerial photograph of the facility is included as Exhibit "A". A site location map is included as Exhibit "B".

The MIC currently houses various businesses some of which use rail and some of which do not. Among the rail users is Boise Cascade which stores and transloads lumber products and Con Agra which produces micro wave popcorn. Much of the rail yard and storage yard behind the facility is used for the storage, staging, and mixing of new, finished automobiles and trucks. MIC is a mixing/distribution yard for both General Motors and Daimler-Chrysler products. At any given time there are thousands of new vehicles in the facility waiting for transport via truck or rail. Most of the inbound vehicle transport is via rail.

***January, 2006 Project:*** In January, 2006, ORDC Commissioners approved a $100,000 grant and $650,000 loan to the MIC to help it rebuild 4,000 feet of rail, rehabilitate 10,000 feet of rail, and to purchase intermodal loading/unloading equipment to initiate new intermodal service between Marion and Kansas City. MIC chose not to take advantage of ORDC loan funding because it needed to borrow funds from other sources to complete the $2.5 million project. This new service started in June, 2006.

MIC has long term contracts in place with Schneider Trucking. Schneider gathers trailers and containers from Mexico, California and other western venues in Kansas City where CSX Intermodal, in conjunction with the Kansas City Southern, puts the traffic on 100+ trailer/container unit trains bound for the MIC. From Marion, the trailers and containers are trucked to their final destinations in Ohio and the east. Schneider also arranged for Ohio and eastern traffic to be sent from the MIC to Kansas City daily for distribution out west. At present, the traffic is well balanced with very few empty trailers or containers being transported by rail.

CSX Intermodal and the Kansas City Southern have four dedicated train sets for this traffic in operation at all times. One will be loading/unloading in Kansas City, one will be in transit from Marion to Kansas City, one will be in transit from Kansas City to Marion, and one will be loading/unloading in Marion. The trailers transported are specially reinforced trailers for intermodal service. They carry all manner of freight, including bulk products as well as finished products. One train arrives and one train departs from the MIC six days a week. Ohio shippers served include Con Agra, General Mills, Bradley Mills, Whirlpool, Sure Trax, and Proctor and Gamble.

In January, 2006, it was expected that 60,000 units (trailers and containers) would be handled by MIC in the first year.

***Phase II Project:*** The MIC Intermodal facility has not yet been in operation for a full year but business is already growing. It is now projected that MIC will handle 90,000 units by the end of its first full year of operations. More equipment is needed to effectively handle this volume of traffic.

## PROJECT DESCRIPTION

MIC currently has one overhead crane which rolls along a concrete pad to handle full loads and a side packer, primarily to handle empty loads. A second overhead crane is needed to improve the efficiency of the operation and to ensure effective service if the current overhead crane cannot be used for some reason. Here are the costs to bring another used crane to the MIC:

**Costs for Second Overhead Crane at MIC Intermodal Facility**

| | |
|---|---|
| Purchase Used Crane | $27,000 |
| Rehabilitation | $275,000 |
| Modification and Upgrades | $46,000 |
| Concrete Turning Pad | $60,000 |
| Extra Crane Engine | $22,000 |
| Moving & Erecting | $20,000 |
| **Total** | **$450,000** |

## WHY ORDC FUNDING IS NEEDED

The need to expand MIC Intermodal operations comes at a time when MIC is still barely breaking even on start up operations. The ORDC grant and loan funding will enable the MIC to proceed with the Phase II project.

## PROJECT BENEFITS

- New intermodal facility is providing Ohio businesses in north central and central Ohio with new transportation options.
- New intermodal facility could stimulate economic development of 300 “shovel ready” acres and 900 other acres in immediate proximity to MIC.
- Five new jobs will be created at MIC to add to the 10 people already employed by MIC for the intermodal project.
- Schneider Trucking has hired 6 people to handle the marketing and logistics of the MIC. About 60 truck drivers serve the MIC’s trucking needs for the intermodal traffic.
- About 90,000 truck trips in the western half of Ohio will be eliminated each year by the new train service.
- For each of the 90,000 units handled by the MIC Intermodal, Ohio shippers and receivers are saving from $50 to $100 per load.

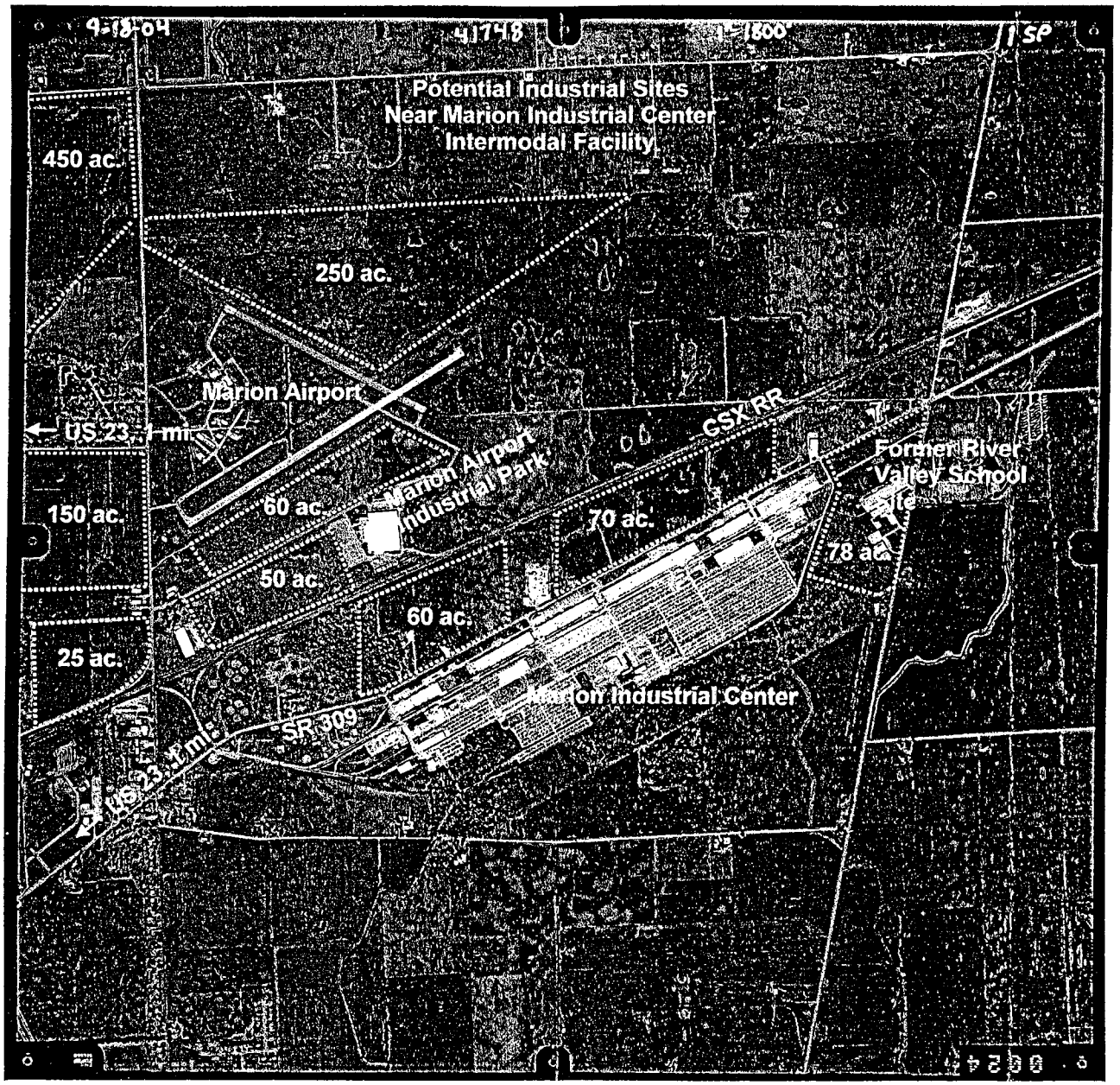
## OTHER CONTRIBUTIONS

As this project is a rail intermodal project at an existing facility, no other contributions are required from other sources.

## STAFF RECOMMENDATIONS/CONTINGENCIES

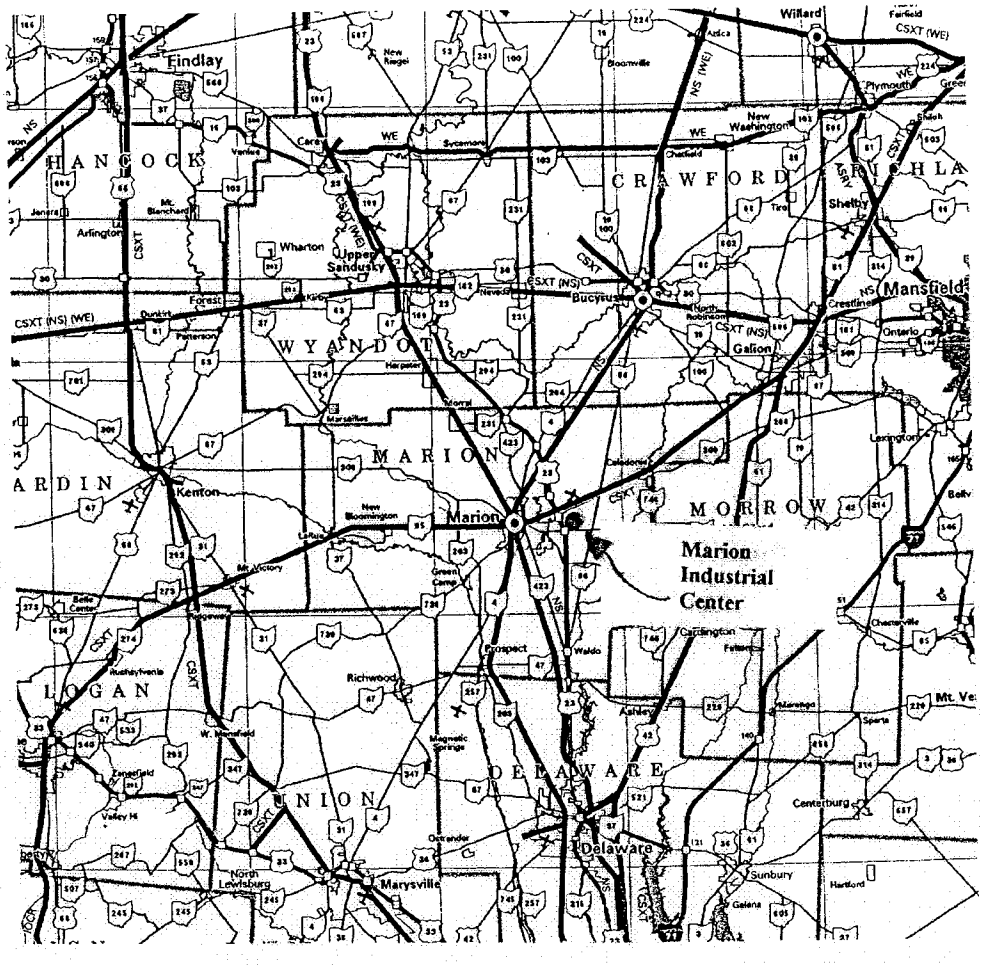
Staff requests that Commissioners empower the Executive Director to determine the appropriate collateral for the loan.

MIC Intermodal Rail Upgrade Project, Nearby Industrial Sites



"B"

# MARION INDUSTRIAL CENTER



**RESOLUTION 07-04**
**Re: Marion Industrial Center Intermodal Facility Project Loan & Grant**

A RESOLUTION DETERMINING THE APPROPRIATENESS OF ASSISTANCE PROPOSED TO BE PROVIDED TO THE MARION INDUSTRIAL CENTER ("COMPANY") UNDER CHAPTER 4981 OF THE OHIO REVISED CODE.

WHEREAS, this Commission as the Ohio Rail Development Commission ("ORDC") created by Chapter 4981 of the Ohio Revised Code, has the responsibility of reviewing and making recommendations to ORDC staff with respect to the assistance under Chapter 4981 of the Ohio Revised Code (the "Act") proposed to be provided; and

WHEREAS, the ORDC has under consideration of the provision of assistance under the Act to the West Central Ohio Port Company (the "Company"); and

WHEREAS, the ORDC staff has submitted to this ORDC the request for assistance submitted by the Company; the determination of the Executive Director of the ORDC and the facts upon which such determination is based, that the proposed assistance will conform to the requirements of the Act, and the terms of the proposed assistance; and

WHEREAS, this ORDC has reviewed such submissions and has discussed with the Executive Director and staff of the ORDC the proposed assistance; and

WHEREAS, on the basis of such review and discussions, this ORDC has determined that the provision of assistance to the Company, as set forth in the ORDC staff's submissions, is appropriate.

NOW, THEREFORE, BE IT RESOLVED by the ORDC of the State of Ohio:

Section 1. That the ORDC determines that the assistance proposed to be provided under the Act to the Company to assist the Company with the Rail Service Project (as defined below) is appropriate.

Section 2. That the ORDC approves the proposed assistance to the Company, the nature, amount and terms of which are summarized in Exhibit "A" attached hereto.

Moved By _____
Seconded By_____

Upon roll call, the vote resulted as follows:

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| James E. Betts, Chair | ____ | yes | _____ | no | _____ | absent | ____ | abstained | ____ Recused |
| Howard Wood for James Beasley | ____ | yes | _____ | no | _____ | absent | ____ | abstained | ____ Recused |
| Barbara Hammontree Bennett | ____ | yes | _____ | no | _____ | absent | ____ | abstained | ____ Recused |
| Eric Neff for Lt. Gov. Lee Fisher | ____ | yes | _____ | no | _____ | absent | ____ | abstained | ____ Recused |
| Solomon Jackson | ____ | yes | _____ | no | _____ | absent | ____ | abstained | ____ Recused |
| Thomas McOwen | ____ | yes | _____ | no | _____ | absent | ____ | abstained | ____ Recused |
| Larry Sowers | ____ | yes | _____ | no | _____ | absent | ____ | abstained | ____ Recused |
| Herk Wolfe | ____ | yes | _____ | no | _____ | absent | ____ | abstained | ____ Recused |
| Dan Roberts | ____ | yes | _____ | no | _____ | absent | ____ | abstained | ____ Recused |
| Jim Hartung | ____ | yes | _____ | no | _____ | absent | ____ | abstained | ____ Recused |

**COMMISSION ACTION:** Motion approved Other action
Motion denied Date 3/30/07

## CERTIFICATE

I, the undersigned Chairman of the ORDC, hereby certify that the foregoing is a true and correct record of the resolution of said ORDC.

_____ 3/30/07
James E. Betts, Chairman Date

## EXHIBIT A

A grant to the Company pursuant to Section 4981.032 of the Ohio Revised Code in the amount up to One Hundred Fifty Thousand Dollars ($150,000) (the "ORDC Grant") and a loan in an amount of up to Three Hundred Thousand Dollars ($300,000) (the "ORDC Loan") to construct the Rail Service Project as defined herein. The ORDC Grant and ORDC Loan shall be used to to purchase, transport, and rehabilitate a used overhead crane for the Company at its Claridon Township site in Marion County, Ohio. The terms for the loan shall consist of a five year term, 0% interest in year one, six months deferred payment on principal, 2/3 of prime rate of interest for years two through five, and a letter of credit or other collateral as determined to be adequate by the Acting Executive Director.

The ORDC Grant and Loan are subject to the following condition:

1. The Company must meet all standard ORDC program requirements, including any applicable prevailing wage provisions, in expending the ORDC Grant and ORDC Loan.

2 The Company shall execute and obtain such documents as are deemed necessary by the ORDC to evidence, close and secure the ORDC Loan.

# APPROVED PROJECT BRIEFING
# ALLEN COUNTY RAIL SPUR/ALPLA INC.

March 20, 2007

| Project Costs | | Project Benefits |
|---|---|---|
| * ORDC Grant | $75,000 | * Alpla Creates 50 New Jobs |
| * Alpla Investment | $435,000 | * Opens Up Two Industrial Parks to Rail |
| * Allen County/CDBG | $295,000 | * 100 to 300 New Carloads of Rail Traffic |
| * Allen Port Authority | $125,000 | |

## INTRODUCTION

Allen County Commissioners requested a grant of $75,000 to fill in a funding gap in a rail project to build a 2,300 ft. lead track and 400 ft. rail spur to serve a new Austrian business called Alpla Inc. which is moving into an existing building near Lima.

## BACKGROUND

***New Alpla Plant:*** Alpla Inc. is an Austrian Company which has several plastics plants already established in the US. Alpla has a contract to supply Proctor & Gamble's Lima plant with plastic bottles/containers. In addition to P&G, Alpla will do business with a variety of other customers. To get close to the Lima P&G plant, Alpla spent $3 million to purchase a ten year old, 100,000 sq. ft. building in Ft. Shawnee, just south of Lima, which was recently the home of another plastics company which supplied the auto industry (Engineered Plastic Products) that shut down last year and left the area. Alpla is in the process of adding on an additional 60,000 sq. ft. to the building and installing blow molding equipment at a cost exceeding $15 million. Alpla has plans to add another 140,000 sq. ft. to the building in 2008 to further increase capacity. Alpla will create 50 jobs to start off with an average salary of $14 per hour. Similar plants Alpla has already built in the US have grown to 150 jobs. The new Alpla plant will generate about 100 rail cars of inbound plastic pellet/resin traffic a year at the start. This traffic could grow to 200 or 300 carloads per year as Alpla business grows.

***Rail Issues:*** The new Alpla plant is located along the CSX Toledo to Cincinnati mainline. This line is a congested single tracked line which handles over 40 trains per day. Because of congestion on the line, CSX cannot use the mainline for switching Alpla. CSX requires that a 2,300 ft. lead track be built off the mainline so that a local train switching Alpla, or other industries in the area which may require rail service in the future, can totally clear the mainline. Therefore, both the 2,300 ft. lead track and a 400 ft. spur track need to be built before CSX can serve Alpla.

***Lead Track Opens Up Businesses and Industrial Parks to Rail:*** Alpla is locating in the Ft. Shawnee Industrial Center which is nearly filled up 23 acre park. There are existing businesses in this park other than Alpla which have indicated an interest in using rail once the new lead track is built. In addition, the new lead will parallel about one-half of the vacant 135 acre Allen County West/Foreign Trade Zone Industrial Park. The new lead will open up most of this park to rail. Both of these parks have all utilities available for new development. In addition to being located along the CSX mainline, the two industrial parks are located adjacent to I – 75 very near to the Breese Road highway interchange.

## PROJECT DESCRIPTION

A map of the area of the Shawnee Industrial Center and Allen County West Industrial Park is included herein as Exhibit "A". An engineer's estimate of total rail costs to construct a 2,300 ft. lead track off the CSX main and a 400 ft. spur for Alpla are included as Exhibit "B". An engineer's drawing of the new lead and spur track is

included herein as Exhibit "C". CSX local crews will push cars out of its nearby yard in Lima down the mainline to the new electronically controlled turn out to the lead track and Alpla spur.

Allen County will own the new lead track but lease it to the Allen County Port Authority. The Port Authority will maintain the lead track with a per car charge paid by Alpla, or potentially other users. Alpla will own and maintain its rail spur off the lead track.

**WHY ORDC FUNDING IS NEEDED**

ORDC funding is filling a gap between total project costs and what Alpla and local public officials could raise.

**PROJECT BENEFITS**

- Alpla will create 50 new jobs to start, with the potential to increase employment to up to 150 people. Alpla has agreed to consider people laid off by other Lima area manufacturing businesses for jobs.
- The new lead track will open up several businesses in the Shawnee Industrial Center to rail service.
- The new lead track will open up most of the shovel ready 135 acre Allen County West/Foreign Trade Zone Industrial Park to rail service.

**OTHE CONTRIBUTIONS**

The engineer's cost estimate for rail work only is $880,000. Total costs including engineering ($60,000) and a 10% contingency ($94,060) could push costs as high as $1,034,660. Project funding lined up to date is as follows:

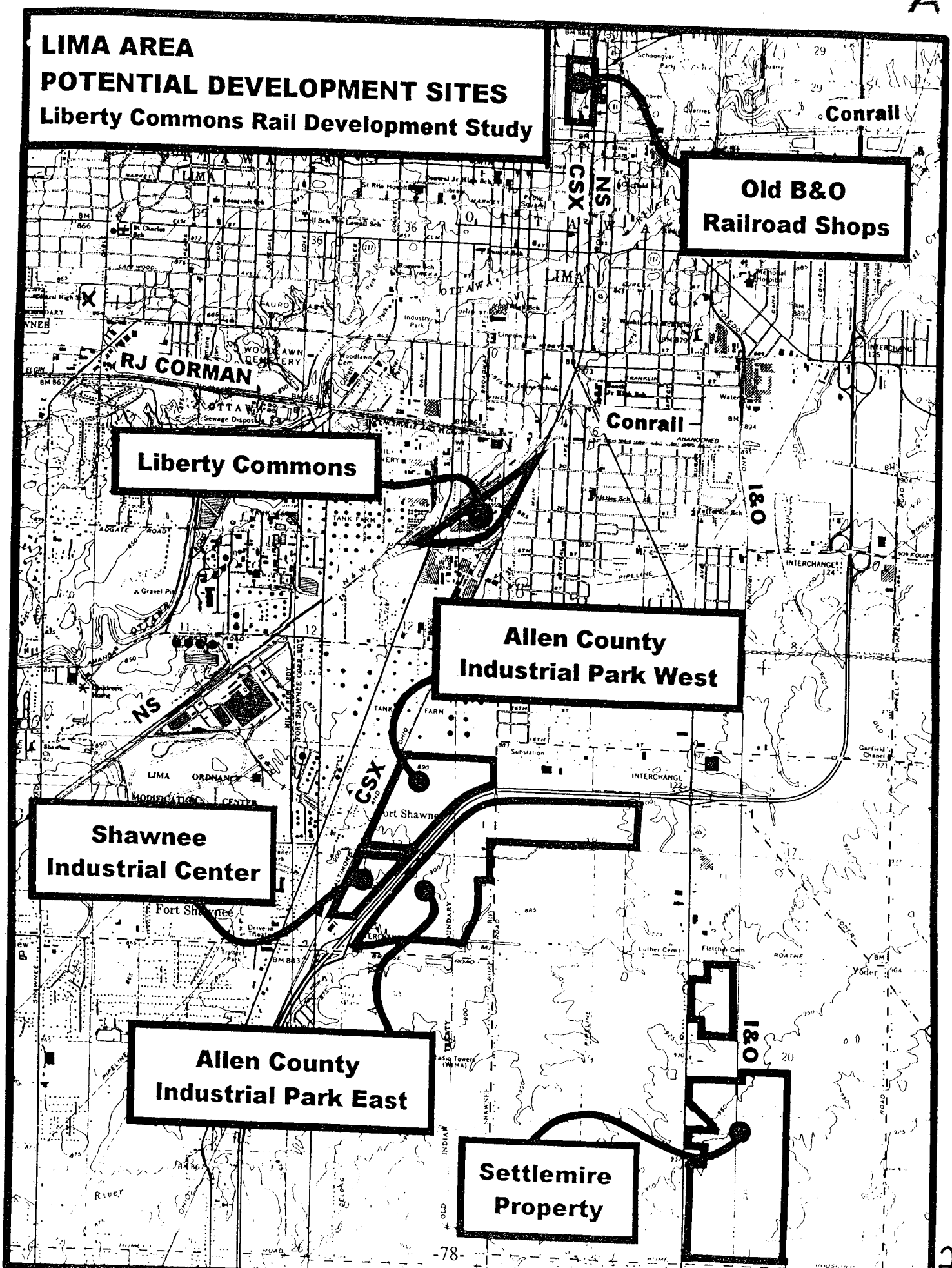
**AVAILABLE PROJECT FUNDING**

| | |
|---|---|
| **ORDC** | **$75,000** |
| **Alpla** | **$435,000** |
| **Allen County/State CDBG** | **$295,000** |
| **Allen County Port Authority** | **$125,000** |
| **Total** | **$930,000** |

In addition to providing funds and obtaining state CDBG funds for the project, Allen County is donating about $70,000 worth of property which it owns for the construction of the new lead track and spur. CSX is providing rate rebates to Alpla to help it recover some of its investment.

**SPECIAL CONTINGENCIES**

ORDC committed to fill the gap in project funding. If total rail and engineering costs exceed the $930,000 raised to date, ORDC funding will be contingent upon Allen County providing the rest of the funding.


LIMA AREA
POTENTIAL DEVELOPMENT SITES
Liberty Commons Rail Development Study
Old B&O Railroad Shops
Conrail
CSX
NS
RJ CORMAN
Liberty Commons
Allen County Industrial Park West
Shawnee Industrial Center
Allen County Industrial Park East
Settlemire Property
I80
LIMA
OTTAWA
WOODLAWN CEMETERY
TANK FARM
LIMA ORDNANCE MODIFICATION CENTER
Fort Shawnee
INTERCHANGE 125
INTERCHANGE 124
INTERCHANGE 123
ABANDONED
Sewage Disposal
A Gravel Pit
Substation
Industry Park
Schoonover Park
Trotter Park
Fletcher Cem
Luther Cem
Yoder
River

"B"

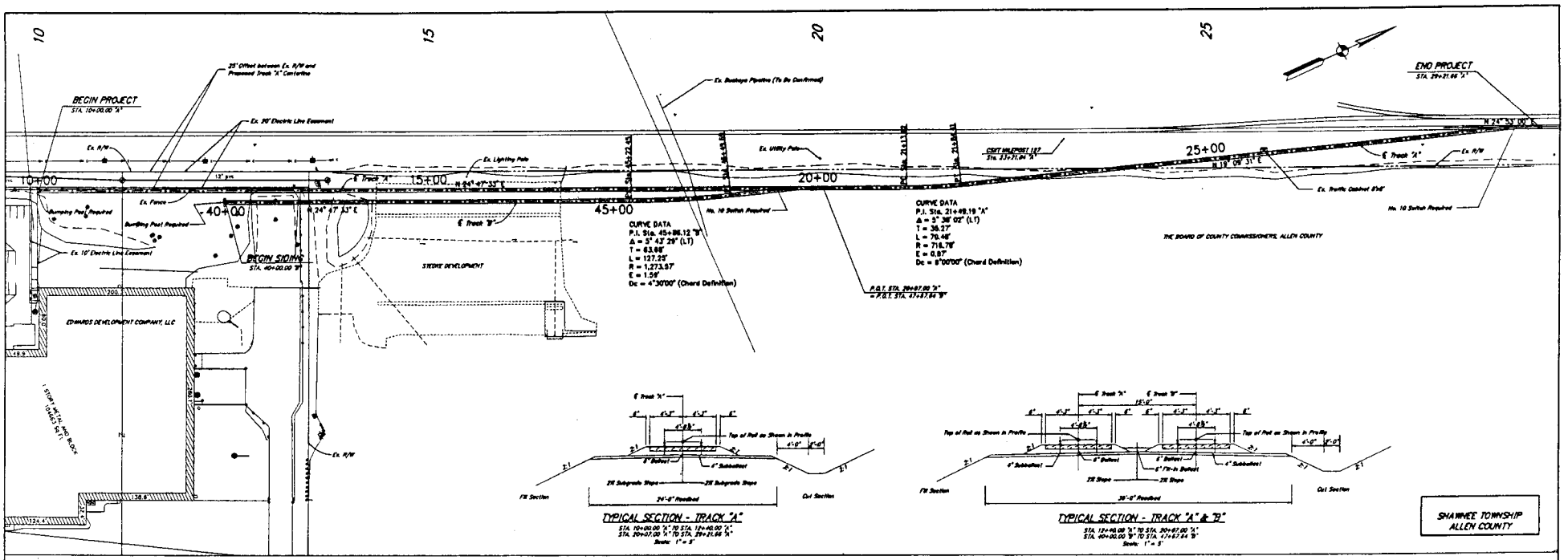
# ALPLA INC.

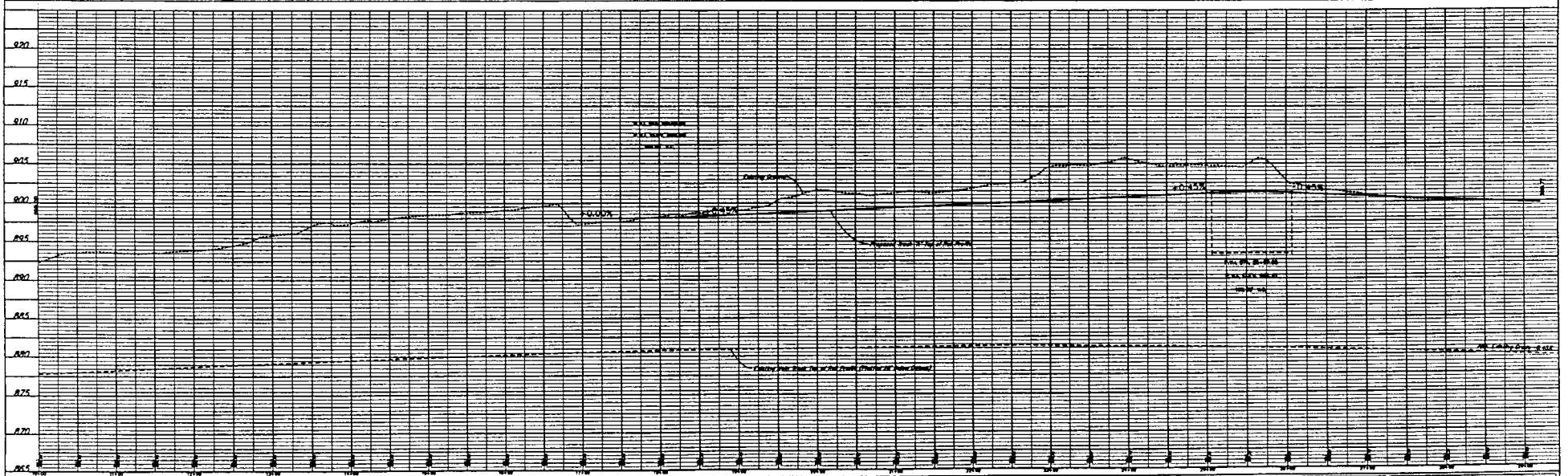
## TRAIN TRACK LEAD LINE & SIDING

| | |
|---|---|
| JOB NAME: | Alpla Inc. |
| DATE: | 12/23/2006 (Revised 1/23/07) |
| BY: | |

### Opinion of Probable Cost of Construction

| | | | | | |
|---|---|---|---|---|---|
| | CSX Switch from main | LS | | | $200,000.00 |
| | Site grading/clearing | | 3000 | $70.00 | $210,000.00 |
| | Telephone/Electric line rework | LS | | | $50,000.00 |
| | Utility Encasement at rail crossing | LS | | | $80,000.00 |
| | 400' Rail Siding for 6 cars | $100/ft | 400 | $100.00 | $40,000.00 |
| | Stop structure at end of lead line | LS | | | $15,000.00 |
| | Stop structure at end of siding | LS | | | $15,000.00 |
| | Lead Line Estimate | $100/ft | 2306 | $100.00 | $230,600.00 |
| | Switch from lead line to siding | LS | | | $40,000.00 |
| | Survey & Engineering | LS | | | $60,000.00 |
| | Subtotal | | | | $940,600.00 |
| | Contingency | | | 10% | $94,060.00 |
| | Total Fee | | | | $1,034,660.00 |




| | | |
|---|---|---|
| RECOMMENDED FOR APPROVAL: DESIGN ENGINEER DATE | ALPLA INDUSTRIAL TRACK LIMA, OH | HORIZONTAL SCALE 1" = 50' / VERTICAL SCALE / BRIDGE FILE / DESIGNATION NO. |
| DESIGNED: TJC DRAWN: CHECKED: JTB CHECKED: | PLAN AND PROFILE TYPICAL SECTION | SURVEY BOOK / SHEETS / CONTRACT / PROJECT NO. |

# Ohio Rail Development Commission

50 West Broad Street, Suite 1510, Columbus, Ohio 43215
614-644-0306 (telephone) • 614-728-4520 (fax) • www.dot.state.oh.us/ohiorail


March 20, 2007

Pursuant to Ohio Rail Development Commission Resolution 99-15 "Spending and Signatory Guidelines," the undersigned hereby approves of the project described in the Approved Project Briefing entitled **ALLEN COUNTY RAIL SPUR/ALPLA, INC.** and dated March 20, 2007 as described in that briefing.

Matthew R. Dietrich
Acting Executive Director

James E. Betts
Chairman

# Approved Project Briefing
# Byesville to Derwent Passing Siding

March 20, 2007

| Project Costs | | Project Benefits |
|---|---|---|
| *** ORDC Grant** | **$25,000** | *** More Efficient Operations for Ohio Central Freight** |
| *** CGCIC/Local In Kind** | **$25,000** | *** More Efficient Operations for BSRY Excursions** |

## INTRODUCTION

The Cambridge-Guernsey Community Improvement Corporation (CGCIC) requested an ORDC grant of $25,000 to help it build a turn out and part of the tangent track for a new rail siding to enable the Byesville Scenic Railway (BSRY) and the Ohio Central to effectively co-exist for excursion and freight service on the 3.6 mile long CGCIC owned track between Byesville and Derwent.

## BACKGROUND

***Rail Line:*** The Byesville to Derwent line is a southern extension of the Ohio Central Railroad's Columbus to Cambridge to Byesville rail line. The Ohio Central acquired this Columbus to Byesville line on October 30, 2004. The Ohio Central provides the only connection to the Byesville to Derwent line and on March 14, 2007 began providing freight service along the line to Bi-Con located at the end of the line in Derwent. CSX was the previous operator of the Columbus to Byesville line. A map of the Byesville to Derwent line is included herein as Exhibit "A".

***Brief History of State - Local Partnership:*** ORDC and the State of Ohio have partnered with the CGCIC and Guernsey County on several occasions to preserve and repair rail infrastructure in Guernsey County.

- In late 2004, ORDC provided a $20,000 grant to match $55,000 in Appalachian Regional Commission funds and $30,000 in local funds to help repair washouts along the line resulting from heavy rains from hurricanes Frances and Ivan. This ORDC grant helped the Buckeye Central Scenic Railroad, the scenic operator at that time on the line, get back into operation with excursion services which helped to stimulate tourist related economic development in Guernsey County. The grant also ensured that the line would remain open to Bi-Con Services, a potential rail freight shipper at that time.

- In 1999 and 2000, ORDC provided $106,125 to cover 89% of the funds for the CGCIC to acquire the Byesville to Derwent line. In addition, ORDC provided $7,500 to cover 11% of the costs for repairing a bridge on the Derwent line.

- In 1999 and 2000, the Ohio Department of Development has invested $85,000 in the rehabilitation of the Derwent line as well as $25,000 to help repair two bridges on that line.

- Local public and private entities have been effective partners with the State in the rail preservation projects. CGCIC has ownership and management responsibilities, and it responsible for administrative and insurance costs which have been tens of thousands of dollars for the various projects. Guernsey County has invested $53,000 in track and bridge repair. Bi-Con Services, located in Derwent, has been a partner in helping to maintain the Derwent line. Bi-Con invested $25,000 in the rehabilitation of the Derwent line and had invested $4,000 or more annually for several years for maintenance.

  In addition to state and local partners, CGCIC has been able to garner $110,000 in Appalachian Regional Commission funding for the rehabilitation of the Derwent line, and the repair of two bridges on that line.

***Bi-Con Services:*** One of ORDC's main reasons for investing in the Derwent line was to keep Bi-Con from moving its 200 jobs out of Derwent to West Virginia. Bi-Con had historically shipped the oversized vessels it produces for the oil and gas industry out by rail because the vessels are too big to move effectively by highway. Due to a general business downturn, Bi-Con has not shipped any vessels by rail since the CGCIC acquired the line. On March 14, 2007, however, Bi-Con loaded out piping fabricated in Derwent on an Ohio Central gondola car. Bi-Con expects to do more rail this year and in the future.

***Cumberland Line:*** In addition to the Bi-Con Derwent operation, the Byesville to Derwent line connects to the 9.6 mile long Derwent to Cumberland Line. American Electric Power currently owns this 9.6 miles of track but is in the process of conveying it to the CGCIC at no charge. The Cumberland line serves planned, future industrial parks and thousands of acres of land suitable for future industrial development as utilities are extended to the area. In addition, there are still 47 million tons of coal reserves located in the area which may be economically feasible to recover as energy costs rise.

***Byesville Scenic Railway:*** The Byesville Scenic Railway (BSRY) replaced the Buckeye Central Scenic Railroad as the operator of excursion services on the Byesville to Derwent line in 2006. The BSRY plans an aggressive schedule of excursion trains for 2007, including Spring and Fall "Steam Weekends" with Ohio Central steam engines running on the Byesville to Derwent line.

***Current Issue:*** With Bi-Con beginning to use rail service again, there is an issue with the Ohio Central freight train service to Bi-Con and the BSRY excursion service getting in the way of each other. There is no siding in Byesville at present so BSRY parks its excursion trains on the mainline. When Ohio Central needs to get down to Bi-Con, BSRY must move its train down to Derwent to get it out of the way of Ohio Central freight service. As Ohio Central service to Bi-Con increases, the chance that the BSRY train will be inadvertently blocking the freight moves will increase.

**PROJECT DESCRIPTION**

The ORDC project consists of installing a number 8 turnout and a small part of the 300 feet of tangent track needed for the new rail siding. This siding will be built along the CGCIC line between Second Street and Main Street in Byesville. A contractor's estimate of total project costs is included as Exhibit "B". The CGCIC will put the ORDC project out to competitive bid. CGCIC will guaranty that the remainder of the passing siding will be built using various in kind contributions. CGCIC will own the new siding and be responsible for maintaining it.

**WHY ORDC FUNDING IS NEEDED**

Without ORDC funds, the siding will not get built.

**PROJECT BENEFITS**

The new siding will prevent conflicts between Ohio Central freight operations and BSRY excursions making both operations more efficient.

The BSRY generates economic development for the area. The BSRY spends about $12,000 a year at local businesses for fuel, repairs, parts, and a variety of supplies needed for the excursion operation. In addition, the BSRY operation brings thousands of tourists to the area. In 2006, excursion ridership was 3,507. It is expected to rise to over 5,000 riders in 2007. There are 47 local businesses, including restaurants, convenience stores, gas stations, shops, and other such stores located within 5 minutes of the BSRY station in Byesville. Tourism has direct and indirect positive impacts on 8,300 jobs in Guernsey County.

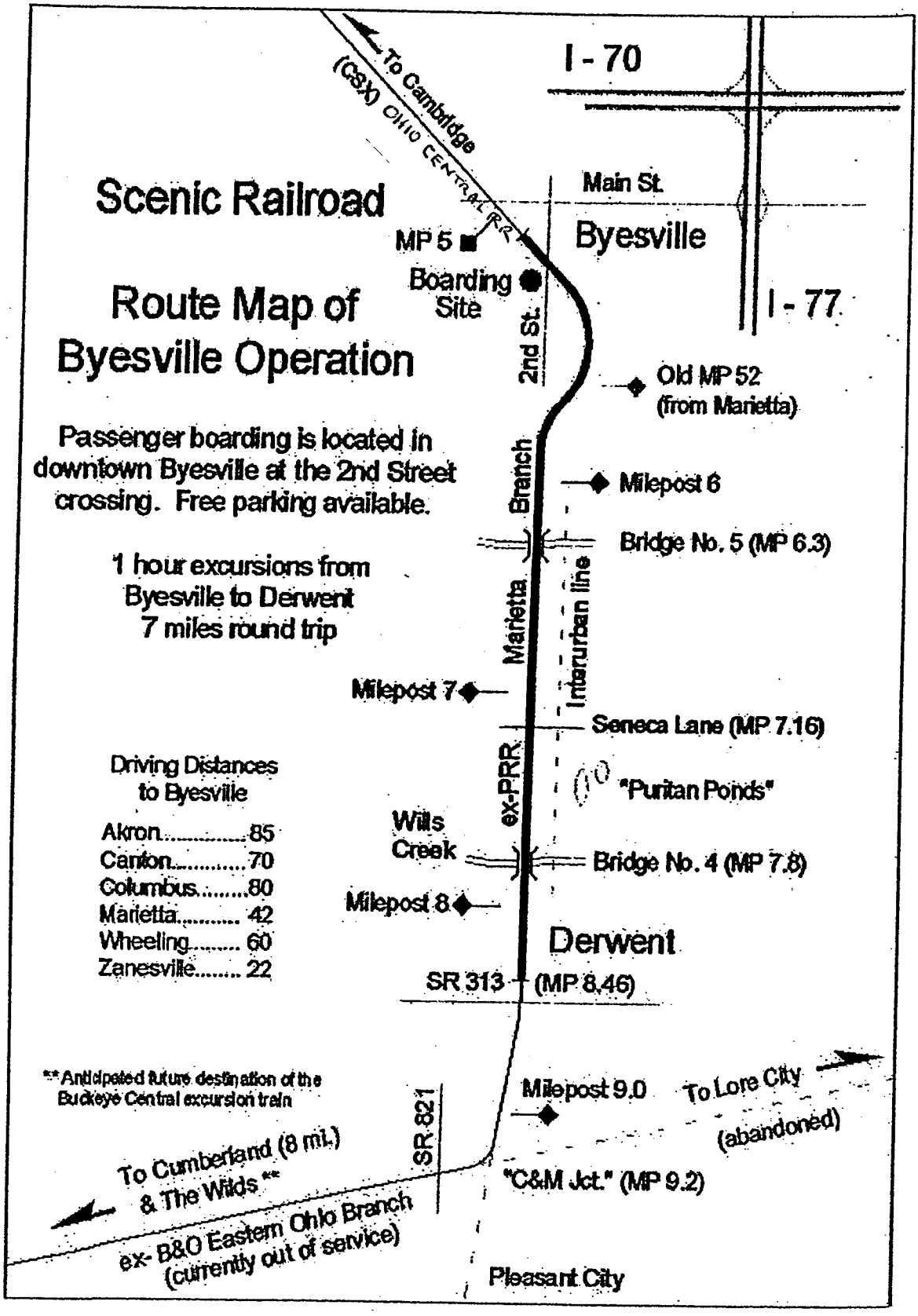
**OTHER CONTRIBUTIONS**

The BSRY receives widespread community support. The Village of Byesville has provided $2,000 in funding. The local Fraternal Order of Eagles is providing $60,000 in donations over a 5 year period. The local Veterans of Foreign Wars has provided $2,000. Local volunteers provided 2,500 hours of services to run the BSRY trains last year and will continue to do so in the future. About 20 to 30 volunteers help with track maintenance work. The Ohio Central Railroad provides track inspection, bridge inspection, and weed control services. Railroad contractors are providing some materials.

**SPECIAL CONTINGENCIES**

ORDC will require CGCIC pay back the ORDC funds if the CGCIC does not get its portion of the siding built within a year of the completion of the ORDC project.

"A"


Scenic Railroad
Route Map of Byesville Operation
Passenger boarding is located in downtown Byesville at the 2nd Street crossing. Free parking available.
1 hour excursions from Byesville to Derwent 7 miles round trip
Driving Distances to Byesville
Akron.....85
Canton.....70
Columbus.....80
Marietta.....42
Wheeling.....60
Zanesville.....22
** Anticipated future destination of the Buckeye Central excursion train
To Cambridge (CSX) Ohio Central RR
I - 70
I - 77
Main St.
Byesville
MP 5
Boarding Site
2nd St.
Old MP 52 (from Marietta)
Branch
Milepost 6
Bridge No. 5 (MP 6.3)
Marietta Interurban line
Milepost 7
Seneca Lane (MP 7.16)
ex-PRR
"Puritan Ponds"
Wills Creek
Bridge No. 4 (MP 7.8)
Milepost 8
Derwent
SR 313 (MP 8.46)
Milepost 9.0
To Lore City (abandoned)
SR 821
To Cumberland (8 mi.) & The Wilds **
"C&M Jct." (MP 9.2)
ex- B&O Eastern Ohio Branch (currently out of service)
Pleasant City

# ACME
CONSTRUCTION CO., INC.

7695 Bond Street P.O. Box 39187 Cleveland, Ohio 44139-0187 (440) 232-7474

*fax number 440-232-7474*

## Fax Transmittal

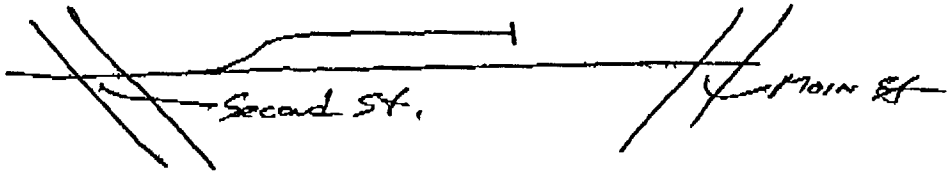
DATE: June 14th, 2004 FAX No: (740) 432-1990

To: Mr. Bob Oess (740) 432-1881
CIC

Revised Proposal

FROM : D. M. Horth

NUMBER OF PAGES INCLUDING THIS PAGE: 2




**Dear Mr. Oess:**

**Please see the attached information concerning the construction of a passing siding there in Byesville, Ohio. The length of existing track from inside of road crossing to the inside of the road crossing between Main Street (Route 209) and South 2nd Street (on the south) is 750 linear feet.**

**Revised Budget Estimate: (This estimate does not include any excavation or grading work, culvert extension work, utility pole removal or relocation work, or surveying for the location of property lines.)**

1. **We will construct one (1) each No. 8 turnout. We will furnish and install the necessary 100 lb. RB, turnout material (consisting of a rigid bolted No. 8 frog, one pair of 16'-6" double reinforced switch points, 7'-0" guard rails, frog plates, switch plates, No. 1 and No. 2 switch rods, and a switch stand and connecting rod), good quality 100 lb. RB relay rail, matching relay joint bars, matching single shoulder relay tie plates, good used 7" x 9" x various length switch ties varying in length from 9'-0" to 16'-6" in length, new track spikes, new track bolts with lock washers, and new crushed limestone ballast tamped underneath the switch ties as needed. 1 Each @ $19,073.00 Each = $19,073.00**

2. We will construct approximately 300 linear feet of standard gauge railroad track. We will furnish and install the necessary good quality 100 lb. RB relay rail in lengths varying between 23' to 33', matching relay joint bars, matching single shoulder relay tie plates, good quality relay 7" x 9" x 8'-6" cross ties, new track spikes, new track bolts with lock washersrs, and 6" (inches) of new crushed limestone ballast tamped underneath the cross ties as needed.
300 Track Feet @ $76.08 per Trk Ft. = $22,824.00.

3. We will furnish and install two each wheel stops at the end of the track.
2 each (one for each rail) @ $1,242.00 each = $2,484.00

TOTAL ESTIMATED BUDGET AMOUNT.....$43,381.00

ALTERNATE:

4. As an alternate, we are interested in donating the 100 lb. RB steel turnout material only, consisting of the following items only: (a rigid bolted No. 8 frog, one pair of 16'-6" double reinforced switch points, two each 7'-0" guard rails, frog plates, switch plates, No. 1 and No. 2 switch rods, and a switch stand and connecting rod). We would do this in return for a bronze plaque proclaiming that a portion of this railroad track was donated and built by ACME CONSTRUCTION CO., INC. of Cleveland, Ohio prominently and permanently displayed at the new railroad depot. Value: 1 each set of good quality relay No. 8, 100 RB turnout material @ $3,000.00 per set. (This material is in stock in our yard.)

ESTIMATED BUDGET AMOUNT WITH DONATION OF NO. 8 TURNOUT.....$40,381.00
(Grading, excavating, culvert extension, utility pole removal, and surveying will be quoted separately upon request.)

Bob,

The total usable length between the two road crossings is about 750 linear feet.
The length of one No. 8 100 lb. RB turnout is about 100'.

Now, it takes about 150 feet of space from the Point of Switch (PS) to the Clearance Point using a No. 8 turnout. This is the point at which two railroad cars can pass each other on their respective sidings. This 150 feet from 400 feet leaves 250 track feet of good useable tangent track to the wheel stops.

Very Truly Yours,

ACME CONSTRUCTION CO., INC.

D. M. Horth,
President

# Ohio Rail Development Commission

50 West Broad Street, Suite 1510, Columbus, Ohio 43215
614-644-0306 (telephone) • 614-728-4520 (fax) • www.dot.state.oh.us/ohiorail


March 20, 2007

Pursuant to Ohio Rail Development Commission Resolution 99-15 "Spending and Signatory Guidelines," the undersigned hereby approves of the project described in the Approved Project Briefing entitled **CAMBRIDGE-GUERNSEY COMMUNITY IMPROVEMENT CORPORATION** and dated March 20, 2007 as described in that briefing.

Matthew R. Dietrich
Acting Executive Director

James E. Betts
Chairman

# OPERATING AGREEMENT

**BETWEEN**

**THE STATE OF OHIO,**

**OHIO RAIL DEVELOPMENT COMMISSION**

**and**

**THE COLUMBUS & OHIO RIVER RAIL ROAD**

**COMPANY**

**for the**

**PANHANDLE RAIL LINE**

**JUNE 2007**

## AGREEMENT

This Agreement, made this _____ day of June, 2007 by and between the STATE OF OHIO, OHIO RAIL DEVELOPMENT COMMISSION, hereinafter referred to as "ORDC", with principal offices at 50 West Broad Street, Suite 1510, Columbus, Ohio; 43215; and THE COLUMBUS & OHIO RIVER RAIL ROAD COMPANY, hereinafter referred to as the "C&OR" with principal offices at47849 Papermill Road, Coshocton, Ohio; 43812

**WITNESSETH**

WHEREAS, this Commission as the Ohio Rail Development Commission ("ORDC") created by Chapter 4981 of the Ohio Revised Code, has the authority to lease any real property in which it has an interest for the continuation and operation of rail service; and

WHEREAS, the ORDC is authorized by Chapter 4981 to exercise all powers necessary or appropriate to carry out its corporate purposes including the authority to make and enter all agreements necessary to the performance of its duties and the execution of its powers; and

WHEREAS, on June 5, 2002, the ORDC entered into an Operating Agreement with the C&OR for the operation of the Panhandle Rail Line ("Panhandle") which expires on June 30, 2007; and

WHEREAS, in accordance with Article 6 E (7) of the Operating Agreement, the ORDC now desires to enter into a new Operating Agreement with C & OR.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto, with the intention of being bound, hereby agree as follows:

ARTICLE 1 - DEFINITIONS

As used in this Agreement.

A) "Agreement" means the terms and conditions as agreed by and between The Ohio Rail Development Commission (ORDC) and The Columbus & Ohio River Rail Road Company (C&OR) for the sole purpose of the C&OR operating the Rail Property as set forth herein.

B) "Director" means the Director of the Ohio Rail Development Commission.

C) "Lease" means the lease agreement by and between CAPRAIL I, INC. and State of Ohio, Ohio Department of Transportation, of which the Ohio Rail Development Commission is a successor agency per Ohio Revised Code (O.R.C.) 4981.03.

D) "Panhandle Mainline" means the so called Weirton Secondary track situated between Milepost 157.8 at Newark, Ohio, and Milepost 49.5 at the east side of Gould's Tunnel and the so called C&N (Columbus & Newark) track between Milepost 191.0 at Columbus and Milepost 157.8 at Newark, containing a total of 141.50 route miles of railroad line. These Panhandle Mainlines are shown in Exhibit "A", the track charts for the Panhandle Mainlines, herein attached.

E) "Panhandle Branchline" means any and all side tracks including the Cadiz Running Track situated between Milepost 0.0 at Cadiz Junction to Milepost 12.8 at the Georgetown Mine; the Hebron Industrial Track between Milepost 133.0 at Hebron and Milepost 138.5 at Heath, Ohio; and the Trinway Secondary Track situated between Milepost 0.3 at its connection to the Panhandle main line, and Milepost 1.43 at Trinway, Ohio, containing a total of 19.43 route miles of road line. These Panhandle Branchlines are shown in Exhibit "B", the track charts for the Panhandle Branchlines, herein attached.

F) "Purchase and Sale Agreement" means the agreement by which Conrail agreed to sell the Rail Property (hereinafter defined) to the C&OR, which the C&OR subsequently assigned to Caprail I, a copy of which agreement is on file at the offices of ORDC.

G) "Rail Property" means Panhandle Mainlines, Panhandle Branchlines and all property conveyed by Conrail to Caprail I in 1992 via the Purchase and Sale Agreement.

ARTICLE 2 - THE RAIL PROPERTY

The Rail Property which is to be operated by the C&OR is that on the Panhandle Mainlines and Panhandle Branchlines and all property conveyed by Conrail in the Purchase and Sale Agreement.

ARTICLE 3 - COMMON CARRIER

Throughout the term hereof, C&OR shall have, and hereby assumes, full right and responsibility to provide common carrier rail service on the Rail Property, and to use and manage the Rail Property for all purposes consistent with the duties, rights, obligations and responsibilities of a rail carrier under the jurisdiction of the Surface Transportation Board, the Federal Railroad Administration, and other governing bodies or laws. Such rights shall include, but shall not be limited to, all rights of a rail carrier under the Revised Interstate Commerce Act, 49 United States Code (U.S.C). S10101, et seq. and the Interstate Commerce Commission Termination Act (Public Law 104-88,109 Stat. 803). ORDC shall not undertake, and, subject to the terms of this Agreement, hereby waives any right it otherwise may have, to conduct or hold itself out to conduct common carrier rail operations on the Rail Property, for the term of this Agreement. Subject to the provisions of this Agreement, ORDC shall provide C&OR with quiet enjoyment of the Rail Property throughout the term of this Agreement.

ARTICLE 4 - NON-EXCLUSIVE OPERATIONS

A) This Agreement does not convey to C&OR exclusive rights to use the Rail Property. ORDC, in its sole discretion, may grant to other rail carrier(s) the right to jointly use on all, or any portion of, the Rail Property as provided in this Article 4 and as stated below.

1) ORDC may grant joint use access to another rail carrier if C&OR has petitioned the Surface Transportation Board (STB) for authority to abandon or discontinue operations over all, or any portion of the Rail Property, or has ceased to provide common carrier rail service over all, or a portion of the Rail Property for a period of six consecutive months, other than pursuant to a lawful embargo; or because of lack of demand for service; or

2) ORDC may grant other rail carrier(s) limited access to jointly use any portion of the Rail Property, if such other carrier:

(i) agrees in writing to indemnify C&OR and hold it harmless against any and all liability arising in any way whatsoever from the other carrier(s) use of the Rail Property, except that of normal track wear and tear which shall be addressed in part (iv) below;

(ii) is an existing rail carrier or, if newly created, can demonstrate its financial and operational capabilities to competently operate a railroad (which determination will be solely within the discretion of ORDC);

(iii) agrees that at all times, the operations of the other rail carrier(s) shall be conducted in a manner which does not unduly interfere with the C&OR's operations and shall be in compliance with all dispatching orders, operating rules, directives and schedules of the C&OR;

(iv) agrees to pay a users fee or trackage rights charge to the C&OR of not less than thirty point four nine cents ($0.3049) per car mile for movement of any locomotive or car, loaded or empty, subject to annual escalation from July 1, (2007) ?2002, based upon the Rail Cost Adjustment Factor, Unadjusted, published by the Association of American Railroads for the normal wear and tear on Rail Property track and other purposes.

B) In the event other rail carrier(s) agrees to meet and comply with sections (A)(2), (i),( ii), (iii), and (iv) above, the C&OR will make reasonable good faith efforts to accommodate the other carrier(s) operational requests.

C) Any other provision of this Article notwithstanding, the joint use appropriate exemption or operations over the Rail Property by any carrier other than C&OR shall be subject to such

prior approval of the STB or other governmental bodies with jurisdiction over the premises as may be required under otherwise applicable law.

D) Any other provision of this Article notwithstanding, ORDC shall in no event grant any rail carrier other than C&OR the right to jointly use or operate over the Rail Property during the term of this Agreement pursuant to the above provisions_ for the purpose of (1) providing transportation service of any kind to an Existing Rail User: or (2) transporting traffic that is the subject of a valid contract between the C&OR and a shipper. For purpose of this Agreement, "Existing Rail User" is defined as any shipper presently located along the Rail Property that shipped or received a rail car or cars via the C&OR over the Rail Property at any time during the three years prior to the execution of this Agreement.

E) Nothing in this Article shall be construed as permitting ORDC to grant any carrier the right to operate over any line of railroad other than the Rail Property, except as stipulated herein in Article 5, "ORDC Rights on Contiguous Lines/Right of First Refusal."

F) The procedure by which ORDC will determine whether to grant limited operating rights under the above provisions to a rail carrier other than the C&OR pursuant to this Article shall be as follows:

1) Upon receipt of a written request for limited rights to jointly use any portion of the Rail Property under provision of (2)(ii) above, ORDC will provide a copy of the request to the C&OR.

2) Within forty-five (45) days after receipt of the request, the C&OR shall (i) provide ORDC and the requesting railroad with a written explanation of the terms and conditions that will apply to the requesting railroad's operations over the Rail Property, consistent with this Article; and (ii) at the C&OR's option, provide ORDC with a confidential proposal of terms, including, where appropriate, rates or division of rates under which the C&OR would agree to provide the service proposed to be provided by the requesting railroad.

3) If the requesting railroad objects to terms or conditions provided by the C&OR under Paragraph 2(i), above, it shall so inform ORDC and promptly thereafter ORDC shall confer with the C&OR with respect to the establishment of revised terms and conditions. If the C&OR and ORDC have not agreed upon such revised terms or conditions within thirty (30) days after the requesting railroad's notice hereunder, then subject to Paragraph 5, below, ORDC may determine the revised terms and conditions that will apply.

4) In making its determination whether to grant limited rights to jointly use rail facilities to a requesting railroad under subsection (2)(ii) of this Article, ORDC shall at a minimum consider the following:

(i) The impact that granting joint rights would have on the C&OR's ability to continue to operate profitably.

(ii) The comparative efficiency and value to the shipping public of any proposal submitted by the C&OR under Paragraph 2(ii), above.

(iii) Whether the fee to be paid to the C&OR under Part A(2)(iv) of this Article is adequate to cover any increase in the cost of maintaining the Rail Property resulting from a granting of joint rights.

(iv) Any increase in operating costs that would be incurred by the C&OR as a result of accommodating the requesting railroad's operations.

(v) Whether and on what terms the requesting railroad will agree to grant the C&OR or its affiliates rights to operate over the requesting railroad's lines.

(vi) The impact that the requesting railroad's operations over the Rail Property would have on the quality of transportation service available to the public, including shippers that would continue to be served by the C&OR.

5) Any other provision of this Agreement notwithstanding, and subject to any necessary regulatory approval, in the event that ORDC grants joint rights to another rail carrier under this Article 4 over the C&OR's objection, the C&OR shall have the right to terminate this Agreement without further obligation to ORDC, except for the duty to facilitate the orderly change in service from the C&OR to another carrier, and cease to operate over the Panhandle, upon one hundred eighty (180) days prior written notice to ORDC.

6) Any grant of joint rights to another rail carrier under this Article shall be a matter of agreement exclusively between ORDC and such other rail carrier, which shall be solely responsible for procuring any regulatory approvals necessary for the exercise of such joint rights. No privity of contract shall be deemed to exist between the C&OR and a rail carrier granted joint rights by ORDC under this Article with respect to such rights, or any claims or liability that may arise thereunder or in connection therewith. C&OR agrees, however, that C&OR shall fully cooperate as needed with ORDC before the Surface Transportation Board, and/or any other federal or state entity with jurisdiction over the granting of joint rights, to provide any C&OR filings or documentation which is required for ORDC to provide joint rights as described in this Article.

G) ORDC shall retain the absolute right to grant joint rights to railroads other than the C&OR under the terms and conditions of this Article.

ARTICLE 5 - ORDC RIGHTS ON CONTIGUOUS LINES/RIGHT OF FIRST REFUSAL

A) The C&OR currently owns and operates a rail line which connects to the western most end of the Rail Property at approximately Mile Post 191 in Columbus, and which connects to CSX Transportation and Norfolk Southern at CP 138 in Columbus (hereinafter known as the Neilston Connector); and may in the future own, lease, or otherwise control and operate a rail line from MP P-49.5 at Gould Tunnel east to a connection with Norfolk Southern in Mingo Junction (hereinafter the Mingo Connector).

B) The C&OR acknowledges that it may be necessary for trains to move over the Neilston Connector or the Mingo Connector to connect the Rail Property with CSX Transportation and Norfolk Southern or successor railroads at Columbus or at Mingo Junction. The C&OR therefore agrees that in the event the ORDC grants joint rights over the Rail Property to another rail carrier in accordance with Article 4 hereof, and this Agreement remains in effect, the C&OR will enter into an appropriate interchange access agreement with such other carrier allowing the carrier direct access to interchange of traffic with CSX Transportation and Norfolk Southern or their successors at Columbus or Mingo Junction. The terms of such agreement shall be negotiated by the C&OR with the tenant rail carrier; provided, however, that the C&OR shall not require compensation or terms for use of the Connection Tracks that exceed the level of compensation or terms determined in accordance with Article 4, "Non Exclusive Operations" of this Agreement.

C) In the event the C&OR, or a related entity, decides to sell or abandon either the Neilston Connector or the Mingo Connector (in the event that C&OR, or a related entity, has acquired the latter), the C&OR, or a related entity, shall first offer the ORDC the opportunity to purchase the Neilston Connector and/or the Mingo Connector for Fair Market Value. In the event this Agreement expires or is terminated and the C&OR, or a related entity, no longer conducts rail freight operations over the Rail Property, the C&OR, or a related entity, shall agree to sell to ORDC and ORDC reserves the right to purchase from the C&OR, or a related entity, the Neilston Connector and/or the Mingo Connector for Fair Market Value.

ARTICLE 6 - TERM

A) The term of this Agreement shall commence on July 1, 2007 and shall continue until June 30, 2012. ORDC retains, however, the right to terminate this Agreement at its discretion.

B) It is ORDC's intent, but not obligation, to maintain this Agreement for the full term of this Agreement.

C) ORDC's obligations under this Article 6, "Term", are subject to and may be limited or excused pursuant to the terms of Article 30, "Limitations".

D) Notwithstanding, any of the foregoing provisions of this Article 6 "Term" to the contrary ORDC's ability to maintain this Agreement, or to enter into subsequent Agreements, is subject to and dependent on, among other things, the Ohio legislature duly and validly authorizing the appropriations necessary for ORDC to continue to perform its obligations under the Lease during each successive biennial budget period.

E) Nothing in this Article shall be construed to extend this Agreement beyond the term described in this Article. However, ORDC recognizes that C&OR's performance under this Agreement shall be the determining factor in the methodology which the ORDC employs to choose the contract operator for the Rail Property for the period of time from July, 2007 to June, 2012. ORDC and C&OR hereby establish the following performance standards for the C&OR for the duration of this Agreement:

1) Shipper Satisfaction: In or about July, 2006, ORDC shall conduct a survey using the survey form herein included as Exhibit "C" of twenty rail users on the Rail Property including the ten (10) most active rail users plus ten (10) others selected at random. ORDC shall deem the performance of the C&OR to be satisfactory in this category if ninety percent (90%) of responses or more are in the "3", "4", or "5" classifications.

2) Safety: In or about July, 2006, ORDC shall contact the Federal Railroad Administration (FRA) to determine the C&OR's safety performance for the previous four year period for the three categories below. ORDC shall deem the C&OR's performance to be satisfactory if the corresponding average annual performance standards are met or exceeded.

| Categories | Performance Standard |
|---|---|
| - FRA Incidents Ratio | Lower Than Class I Average |
| - Employee Injury Ratio | Lower Than Class I Average |
| - Track Accidents/1000 miles | Lower Than Class I Average |

3) Carloading: ORDC shall deem the C&OR's performance to be satisfactory in this category if by July, 2006, the revenue carloadings generated by the C&OR on or over the Rail Property exceeded 20,000 carloads during the previous twelve month period, or during calendar year 2005.

4) Track Maintenance: ORDC shall deem the C&OR's performance to be satisfactory in this category if the C&OR meets the standards set out in Article 10, "Maintenance and Repairs", of this Agreement.

5) Operations/Financials: ORDC shall deem the C&OR's performance to be satisfactory in this category if by July, 2011, the C&OR shall demonstrate that it has a Current Asset Ratio which is more than .75 for the previous 12 month period or for calendar year 2010. ORDC shall calculate this Current Asset Ratio using the audited financial statements of the C&OR. The Current Asset Ratio will be calculated as follows: Current Assets divided by Current Liabilities.

6) Connectivity/Value Added: ORDC shall deem the C&OR's performance to be satisfactory in this category if in or about July 2011, the C&OR, through its affiliated Ohio Central System rail companies, maintains effective interchanges with Class I railroads at Warwick, Ohio, and Massillon, Ohio, or at points equivalent or better to these locations.

7) Compliance With Operating Agreement: ORDC shall deem the C&OR's performance to be satisfactory in this category if the C&OR is not in default of any of the provisions of this Agreement. In the event that ORDC's analysis under this category is done at such time when the C&OR is in default of this Agreement, the C&OR shall have the full time allotted in Article 29 "Default" of this Agreement, to correct the default to meet the stipulations of this Article.

In the event that ORDC deems the C&OR's performance in all of the Categories included in this Section "E" of this Article to be satisfactory, ORDC shall not pursue a Competitive Selection Process to determine the operator of the Rail Property for the period of time between July, 2012 and June, 2017. Instead, ORDC shall commence good faith negotiations with the C&OR for the operation of the Rail Property in this 2012 to 2017 time frame. ORDC shall use the terms and conditions of this Agreement as the basis to negotiate the next five year term. It is ORDC's intent to enter into a new operating agreement with the C&OR from July, 2012 to June, 2017 if the C&OR agrees to the same terms and conditions as contained in this Agreement.

ORDC, however, reserves the right to stipulate new terms and conditions in the July, 2012 to June, 2017 agreement with the C&OR. ORDC shall limit new terms and conditions to areas where there have been tangibly demonstrated, substantial changes in conditions involving the operation of the Rail Property or to rail lines contiguous with the Rail Property. Further, in the event that the C&OR and ORDC cannot reach an agreement on new terms and conditions by December 31, 2011, then ORDC reserves the right to commence a competitive selection process.

In the event that ORDC chooses the C&OR as the contract operator for the Rail Property for the July, 2012 to June 2017 time period through negotiations as described herein in this Article, it is ORDC's intent that the ORDC-C&OR agreement shall contain the same or similar Performance Standards as contained in this Article for this 2012 to 2017 time period. Further, it is ORDC's intent to reach a negotiated contract with the C&OR for the July, 2012 to June, 2017 time period if ORDC deems that the Performance Standards from the 2007 to 2012 agreement have been satisfactorily met by the C&OR.

ARTICLE 7 - C&OR PAYMENTS

During the term of this Agreement, C&OR shall pay from the gross revenues received from operation of the Rail Property the amount of FIFTY-EIGHT THOUSAND DOLLARS ($58,000) per month. Such payments shall fulfill ORDC's Lease requirements with First Capital Corp or its subsidiary, CAPRAIL I, INC. The abovementioned payments shall be made to a special account established and maintained at the J P Morgan Chase by means of direct electronic transfer by the first of each month, or 24 hours before said Lease payments are due, whichever comes later. In addition, a check for TWO THOUSAND, FIVE HUNDRED DOLLARS ($2,500), made payable to: Treasurer State of Ohio, shall be mailed to ORDC by the first business day of each month.

ARTICLE 8 - INSPECTION AND AUDIT

The C&OR agrees that ORDC, or its duly authorized representatives, shall, at all reasonable times and upon reasonable notice, be permitted to inspect said Rail Property, and such records and data maintained by the C&OR as may be necessary to monitor the C&OR's compliance with this Agreement; provided, however, that so long as C&OR is not in default hereunder, ORDC shall not audit C&OR's financial records more frequently than once each year. Additionally, non-financial records will not be audited more than once a year as long as C&OR is not in default. As part of the annual audit, upon request by ORDC the records of the C&OR parent and affiliates shall be made available to ORDC for the purposes of documenting those revenues and expenses that are prorated between C&OR, said parents and affiliates and the methodology used for that proration. Disclosure of information on parent and affiliates shall be limited to that information that applies to the proration basis among Summit View enterprises and/or methodology of proration.

To the extent possible under applicable law, all aspects of ORDC's exercise of audit rights and the results thereof shall be held confidential, and shall not be disclosed without C&OR's prior consent. However, to the extent that disclosure is required by law or by court or administrative order, the C&OR's prior consent shall not be required. In such event, ORDC shall provide the C&OR with as much advance notice of the disclosure, and the circumstance under which disclosure is to be made, as practicable.

Subject to this Article 8, C&OR shall provide confidential carloading information in connection with operations over the Rail Property by customer, commodity, origin and destination, and interchange point (s) as of the end of the C&OR's fiscal year. Further, C&OR shall provide to ORDC Gross ton miles/mile information broken down by various segments as requested by ORDC.

During the term of this Agreement and subject to this Article 8, the C&OR shall, within

one hundred five (105) days after the end of its fiscal year provide the Director of ORDC with a confidential, audited financial report prepared by a Certified Public Accountant, including profit-loss statements, balance sheets and cash flow statements. C&OR shall respond within thirty (30) days to ORDC's request for relevant information and data concerning C&OR's railroad operation.

ARTICLE 9 - ALTERATIONS AND IMPROVEMENTS

C&OR, for the duration of this Agreement, shall have the right to make alterations to and improvements upon the Rail Property provided rail alterations and improvements are kept in good order, repair and in a safe condition and provided further that prior written notification of the proposed alteration or improvement is submitted to and approved by ORDC, which approval shall not unreasonably be withheld. ORDC shall grant such approval subject to the terms of the Lease. The C&OR within sixty (60) days after completion of any construction, alterations, repairs or improvements in or upon the Rail Property, shall furnish to ORDC a certified statement that all charges for labor and materials furnished have been paid, or all schedules of such payments are current, and provide to ORDC copies of releases of liens. The creation or imposition of any lien or charge upon the Rail Property through the failure of the C&OR, its agents, contractors, or subcontractors to render any such payments when due shall be deemed a default under the provisions of this Agreement with the C&OR remaining liable for liens and any other encumbrance so incurred.

For the purpose of this Agreement, "Alterations and Improvements" shall mean any activity which substantially changes the nature of the Rail Property, including but not limited to, the taking up of any portion of rail or track (mainline, branchline, or siding) , the changing of the centerline of any track (mainline, branchline or siding), modifications of any bridges or culverts, construction of any new track, structure or appurtenance on or along the Rail Property, modification of drainage system, or any other non-maintenance activity. Normal track maintenance shall not be considered an Alteration or Improvement. Normal maintenance includes, but is not limited to, tie replacement, surfacing, aligning, bolt tightening, replacement of rail, rail switches, or rail hardware, turning worn rail, replacing ballast and other normal maintenance activities. Further, the C&OR shall have the right to modify its headquarters building in Coshocton without prior approval of the Director. Nothing in this Article shall eliminate, alter, or change the C&OR's responsibilities described in Article 10, "Maintenance and Repairs" below.

It is specifically understood and agreed to by the parties that all improvements to the Rail Property are owned by ORDC. Nothing in this Article shall be construed to grant to the C&OR the right to sell, trade or otherwise profit from the removal of track, track structures or appurtenances. C&OR agrees that ORDC reserves the right to be the sole beneficiary of the proceeds of any salvaging of any track, track structure or appurtenances on the Rail Property. However, the C&OR shall have the right to request in writing to the Director that the C&OR be

allowed to salvage un-needed track or track structures. The C&OR's written request shall contain the reasons why the track or track structures are no longer needed for the operation of the Rail Property, an estimation of the net liquidation value of the items to be salvaged, and a detailed description of the improvements to the Rail Property which will be made with the proceeds from the salvaging, including the exact location of such improvements. The C&OR may commence with the salvaging of materials upon written permission to do so by the Director, and such permission will not be unreasonably withheld.

ARTICLE 10 - MAINTENANCE AND REPAIRS

A) The C&OR has inspected and accepts the Rail Property in its present condition and agrees that no representations or warranties with regard to condition and fitness for use of the Rail Property have been made.

B) The C&OR agrees that, at the C&OR's sole cost and expense, to put, keep, and maintain the Rail Property in good order, repair, and safe condition. The C&OR agrees that the following level of Federal Railroad Administration (FRA) Track Class will be attained and maintained in the following territories:

| | |
|---|---|
| Main Line - Newark to Coshocton | FRA III |
| Main Line - Coshocton to Bowerston | FRA II |
| Main Line - Bowerston to Jewett | FRA III |
| Main Line - Jewett to Gould | FRA II |
| Georgetown Line to MP 0.0 to 5.5 | FRA I |
| Georgetown Line MP 5.5 to 12.8 | FRA I* |
| Trinway Industrial | FRA I* |
| Hebron Line | FRA I |

* It is understood between the contracting parties that there is no demand for local or overhead service on the Georgetown Line between MP 5.5 to 12.8 or the Trinway Industrial and that they are currently not in service. The C&OR commits to attaining and maintaining FRA I Track Class within one year after receipt of a bona fide request for service over any portion of these lines.

It is understood that the above FRA standards shall be attained and maintained independent of the number of rail carloads generated over and upon the Rail Property or any segment thereof.

C) The C&OR commits to expend the following amounts in each year of the contract in the year after the following traffic levels are attained:

| ANNUAL CARLOADS | CAPITAL REPAIR | MAINTENANCE |
|---|---|---|

| | | |
|---|---|---|
| 14,000-14,999 | $800,000 | $390,000 |
| 15,000-15,999 | $900,000 | $401,000 |
| 16,000-16,999 | $1,000,000 | $409,000 |
| 17,000-18,499 | $1,100,000 | $418,000 |
| 18,500-19,999 | $1,300,000 | $430,000 |
| 20,000-22,499 | $1,500,000 | $443,000 |
| 22,500-24,999 | $1,600,000 | $460,000 |
| 25,000 and Over | $1,700,000 | $475,000 |

D) ORDC and the C&OR agree that the Engineering Plan and Budget is critical to the future of the Panhandle Rail Line and that communication between ORDC and the C&OR is central to the accomplishment of the Program. To that end:

1) By each March 15 thereafter during the life of this Agreement the C&OR shall submit to ORDC its work plan for the upcoming maintenance season.

2) By each April 15 thereafter ORDC shall either accept the C&OR's plan or offer modifications to it. ORDC's proposed modifications, if any, will be structured so as to not unduly affect the operation or profitability of the C&OR. The C&OR will make reasonable efforts to accommodate ORDC's modification proposals. Should the C&OR receive no ORDC modifications by April 15 in each year thereafter, it may proceed with its work plan as proposed.

The C&OR will specify in its work plan an estimate of the cost of the various elements of its plan broken down by equipment, materials, and labor. The description and cost of materials will include the specifications for said materials.

E) The C&OR shall fully cooperate with the ORDC in the inspection of materials and work. Materials found defective by ORDC inspectors will not be installed.

F) The C&OR shall annually provide the ORDC with a report on the Maintenance and Capital Repairs performed during the previous calendar year including but not limited to:

1) Narrative of work describing efficiencies and improvements arising therefrom.

2) A listing of material installed on a Mile Post-by-Mile Post basis.

3) Breakdown of project cost by labor, material, and equipment cost.

G) ORDC and the C&OR agree that fluctuation in traffic or in the profitability of traffic may cause financial pressures on the C&OR. Recognizing this, the ORDC shall not find the C&OR in default of its obligations provided that C&OR demonstrates to ORDC's satisfaction that C&OR net revenues from increased carloads was significantly lower than the average net

revenue of other traffic on the Rail Property. The C&OR shall, however, be in default of this Agreement in the event that C&OR expends less than Ninety Percent (90%) of the appropriate target goal in any year.

H) Should the C&OR fail to meet the commitment level established in Part "C" of this Article 10, in a given Year, the shortfall (target minus actual work value) shall have the right to clear the default by adding the shortfall to its work plan for the following year.

I) In the event the C&OR exceeds the commitment level established in Part "C" of this Article 10, for any given year, the resulting credit (Actual Work Value minus commitment) may be applied against commitment level established in Part "C" of this Article 10, for future years.

J) The C&OR's maintenance responsibilities for the Rail Property shall include all railroad responsibilities inherited from previous railroad operators or owners in chronological order. To advance the public interest in the preservation of infrastructure and jobs, ORDC and the C&OR will work together to relieve the Rail Property and its patrons of the responsibility for ownership and/or maintenance of facilities not directly used in or useful in the conduct of railroad operations. Nothing in this subsection shall be deemed or constructed by the parties hereto, or by any third party, to create the relationship of principal and agent, or of partnership, or of joint venture.

Should the C&OR be required by law or other competent authority to expend funds for maintenance of facilities not identified in its annual Engineering Plan" such funds will credited against the C&OR's annual obligations delineated in Part "C" of this Article 10.

In no event shall the C&OR be required to expend any of its funds for the maintenance, repair, and/or replacement of an over-grade highway bridge without first apprising the ORDC of the total cost attributable to any single project and of its possible negative impact on the C&OR's contractual maintenance and capital repair commitments. Should ORDC agree with the C&OR's findings, ORDC will take action including, but not limited to:

1) ORDC will accept the C&OR's application for a grant equal to at least 90% of the total cost of the project which grant shall be promptly considered.

2) Should ORDC fund less than 90% of the project cost via a grant, the ORDC will permit the C&OR to reduce C&OR's maintenance and capital repair commitment level delineated in Part "C" of this Article by the same amount for that or subsequent contract year depending on the timing of the project.

3) In no event will ORDC require the C&OR to fully fund both over-grade highway bridges and maintenance and capital projects which would unduly affect the C&OR's ability to continue profitable operations.

ARTICLE 11 - TAXES AND ASSESSMENTS

The C&OR shall have the sole responsibility to pay all taxes and assessments arising after the effective date of this Agreement for the Rail Property, or C&OR's use of the rail property including, but not limited to, real estate taxes and other assessments if any, throughout the term of this Agreement, or in any renewals of this Agreement. The C&OR shall pay such taxes and assessments directly to the taxing or assessing authority before such payments become delinquent and shall certify to ORDC that these tax obligations have been met. It is further agreed that C&OR shall have the right, at its sole cost and expense, to challenge the application, assessment or computation of any tax, as provided under applicable law.

ARTICLE 12 - ASSIGNMENT AND SUBLETTING

This Agreement and all the terms and conditions hereof shall inure in favor of, and be binding upon, the parties hereto and upon their respective successors and permitted assigns.

Further, the C&OR shall not assign or transfer this Agreement in whole or in part, or sublet the Rail Property, or any part thereof, without the prior written consent of the Director of ORDC which shall not be unreasonably withheld. An assignment, or transfer, or merger, or consolidation by operation of law or proceeding in equity, bankruptcy, insolvency or reorganization, or a transfer of any controlling interest of the stock of the C&OR to a person or persons not now in control, shall be deemed to be an assignment within the meaning of this provision.

For the purpose of timely filing of a Notice of Exemption pursuant to 49CFR Part 1150 and 49 U.S.C. 10901, the C&OR shall be allowed to assign a parent, subsidiary, or corporate affiliate of the C&OR and/or to a voting trustee under 49CFR Part 1013, a controlling interest of stock in the C&OR without prior ORDC approval.

ARTICLE 13 - INSURANCE AND INDEMNIFICATION

This Agreement is without force and effect until such time that the C&OR demonstrates to the satisfaction of ORDC that the C&OR has liability insurance coverage (i.e., bodily injury and property damage coverage) in amounts not less than Ten million dollars ($10,000,000.00) for each individual claim with regard to the operation of the Rail Property. The C&OR shall provide a certified complete copy of all such insurance policies to ORDC not more than ten (10) days prior to the execution of this Agreement. Each such policy of insurance must (i) name ORDC, ODOT, Caprail I, Financial Security Assurance, Bank of New York and the State of Ohio as an additional insured, and (ii) prohibit cancellation or material changes (including but not limited to any decrease in the amount of insurance) without at least thirty (30) days prior written notice to ORDC. The C&OR shall deliver to ORDC verification as to the replacement or renewal of each

such policy not less than thirty (30) days prior to the expiration (or other termination) date of any such policy.

The C&OR agrees to indemnify and hold ORDC, ODOT, Caprail I, Financial Security Assurance, Bank of New York and the State of Ohio harmless from and against any loss, claim, damage, cause of action or absolute liability, (including without limitation, counsel fees) caused by the C&OR's negligent, reckless, intentional, willful or wanton actions or inactions, including such actions or the failures to act of any contractors, subcontractors or employees hired by or working under the direction of the C&OR.

However, nothing in this Article 13 shall be construed as imposing on the C&OR any liability or duty of indemnification whatsoever with respect to any acts or omission of rail carriers other than the C&OR conducting operations on or over the Rail Property pursuant to Article 4, "Non-Exclusive Operation" or Article 26, "Passenger Service".

In no event shall the C&OR or any of its employees, agents, contractors or subcontractors be considered agents or employees of ORDC, ODOT, Caprail I, Financial Security Assurance, Bank of New York and the State of Ohio. The C&OR agrees that none of its employees, agents, contractors or subcontractors shall hold themselves out as, or claim to be, agents, officers or employees of ORDC, ODOT, Caprail I, Financial Security Assurance, Bank of New York and the State of Ohio, and will not, by reason of any relationship with ORDC, ODOT, Caprail I, Financial Security Assurance, Bank of New York and the State of Ohio, make any claim, demand or application to any agent, officer, or employee of the State of Ohio including, but not limited to, rights and privileges concerning worker's compensation benefits, social security coverage or retirement membership or credit.

ARTICLE 14 - TAX PENALTIES

The C&OR agrees to pay any penalties assessed to ORDC or to the C&OR due to lack of payment or late payment by C&OR of any taxes described in Article 11, "Taxes and Assessments", of this Agreement.

ARTICLE 15 - UTILITIES

The C&OR, at its sole cost and expense, shall arrange for and obtain necessary water, electricity and other utility services required for its use. ORDC shall not be liable for any such services, or the suspension of such services.

ARTICLE 16 - PROPERTY MANAGEMENT

A) Subject to the other provisions of this Agreement and this Article, the C&OR shall be obligated to fulfill all responsibilities, obligations, and duties assumed by ORDC under the

Lease. In addition to the foregoing, the C&OR's responsibilities shall include, but not be limited to, fulfilling the ORDC's obligation under the Lease by providing services and collecting fees.

B) The C&OR may enter into new leases, easements, or other property management responsibilities, hereinafter referred to as Property Transactions, which ORDC might enter into under the terms of the Lease only after the C&OR obtains written permission from the Director of ORDC, which permission shall not be unreasonably withheld. ORDC shall have no obligations under such Property Transactions unless the Director accepts such obligations in writing.

C) ORDC reserves the right to require that the C&OR pay directly to ORDC fees, revenues, or other payments which accrue from Property Transactions involving telecommunications, fiber optics, or cellular telephone towers or apparatus. However, in no event shall C&OR be required to pay more than Fifty Percent (50%) of said fees, revenues, or other payments directly to ORDC.

D) The C&OR shall establish a separate interest bearing account called the "Special Projects Fund" which shall consist of all fees, revenues, or other payments the C&OR receives from Property Transactions entered into after the effective date of this Agreement. ORDC shall have no rights, title, or interest in this Special Projects Fund except as described in this Article 16. ORDC shall have the right to determine which projects may be paid for by the C&OR with the Special Project Fund in accordance with the following procedure:

1) At any time, the C&OR may request in writing ORDC's approval to spend all or part of the Special Projects Fund on a project or projects of the C&OR's choosing. The request will include a detailed description of the project or projects to be performed, the method to be used to perform them, and the costs broken down by the various elements of the project or projects.

2) Within thirty (30) days after receiving the C&OR's written request, ORDC shall respond in writing whether or not ORDC approves of the project or projects. ORDC shall retain the right to suggest alterations to the proposed project or alternative projects. ORDC's approval of projects which the C&OR proposes shall not be unreasonably withheld.

3) If ORDC approval is provided, the C&OR may proceed with the project or projects and pay for them using the Special Projects Fund. Within sixty (60) days after project completion, the C&OR shall provide ORDC with a detailed accounting of the actual costs to complete the project or projects.

4) If ORDC approval is not provided for a project or projects, then the C&OR shall retain the right to proceed with the project or projects, subject to the terms and conditions of this Agreement, but shall not use any portion of the Special Projects Fund to pay for any portion of the project or projects.

E) At its sole discretion, ORDC may allow that expenditures of Special Projects Fund monies by the C&OR be counted against the C&OR's obligations in Article 10, "Maintenance and Repairs" of this Agreement. However, ORDC and the C&OR agree that it is the intent of this Article 16 that the Special Projects Fund be used to supplement, not take the place of, the C&OR maintenance and repair expenditures stipulated by Article 10, "Maintenance and Repair".

F) In the event that this Agreement is terminated for any reason, including but not limited to, the default by the C&OR as contained herein in Article 29, "Default", the termination of this Agreement by the C&OR as provided for in Article 4, "Non-Exclusive Operations", or because the term has expired pursuant to Article 6, "Term", then the C&OR shall immediately pay to ORDC any and all funds held in the Special Projects Fund. However, in the event that the C&OR and ORDC are in the process of negotiating a new Operating Agreement for the Rail Property, the C&OR shall not be required to pay to ORDC the monies held in the Special Projects Fund until such time as the negotiations are formally terminated by either party.

Nothing in this Article 16 precludes ORDC from entering into a Property Transaction involving the Rail Property with parties of ORDC's selection under terms and conditions consistent with Article 16 and this Agreement. However, ORDC shall coordinate and cooperate with the C&OR to ensure that the interests of the C&OR are not unduly harmed before entering into the proposed Property Transaction. In the event that the C&OR has an objection to a proposed ORDC Property Transaction, the parties agree to mediate the disagreement as provided for in Article 35, "Alternative Dispute Resolution", of this Agreement.

ARTICLE 17 - C&OR MANAGEMENT FEE

As stipulated in the Articles above, the C&OR shall be responsible for collecting all fees and charges associated with the provision of property management and common carrier services on the Rail Property.

In addition to the payments required under Article 7, "C&OR Payments", of this Agreement, within thirty (30) days after the end of each calendar quarter, the C&OR shall deposit available gross revenues up to five percent (5%) of the gross revenues realized from the operation of the Rail Property for the said previous calendar quarter into an escrow account. The escrow agent upon receipt of said gross revenues shall then pay to C&OR a fixed fee of $300,000.00 per quarter as C&OR's management fee for the previous quarter. Any remaining funds after said payments shall be known as "Excess Funds" and shall be deposited into ORDC accounts as determined by the Director and approved by the Director of the Office of Budget and Management of the State of Ohio. However, in the event that the escrow agent is unable to pay the entire $300,000.00, the C&OR shall receive the maximum amount available in the escrow account and shall receive a non-recourse credit from the escrow agent for the sum equal to the difference between $300,000.00 and the amount paid by the escrow agent. Any credit amount shall be paid to the C&OR by the escrow agent prior to depositing any "Excess Funds" into the

specified ORDC accounts. At the end of the management agreement term, any amounts listed by the escrow agent as credit to the C&OR shall be considered as an uncollected fee and neither the escrow agent, ORDC, or anyone else shall be liable for payment of any C&OR management fee. All liability for the management fee shall be limited to funds held in the escrow account.

ARTICLE 18 - FORCE MAJEURE

In the event of an occurrence beyond the reasonable control of C&OR, such as an act of God, a flood, a major explosion or fire or an act of any government, which prevents or materially impairs C&OR's ability to provide rail service over part or all of the Rail Property, the C&OR's obligation to provide rail service under this Agreement is excused until such time the Rail Property becomes operational. In the event of such an occurrence, ORDC and the C&OR shall determine jointly and in good faith how the expense of repairing or rebuilding the Rail Property shall be divided between ORDC and the C&OR; provided, however, that in the absence of ORDC's commitment to pay for same, C&OR shall not be obligated to undertake any repair or replacement of asset or equipment that would not be required under otherwise applicable law.

An incidence of Force Majeure shall not excuse C&OR's obligations under Article 7 "C&OR Payments". However, it is expressly agreed that ORDC or the C&OR retains the option to terminate this Agreement in accordance with Article 28, "Termination", upon the occurrence of any act deemed to be "Force Majeure" under this Article.

Normal track rehabilitation shall not be considered an occurrence of Force Majeure under this Agreement. Normal track rehabilitation includes, but is not limited to, extensive track repair necessary because of the lack of adequate maintenance or extraordinary use of the line over a period of five (5) or more years.

ARTICLE 19 - EEO REQUIREMENTS

In the hiring of employees or for any contract or subcontract, the C&OR, its sublessee, contractors or subcontractors shall not by reason of race, color, religion, sex, age, disability, national origin, or ancestry discriminate in the employment of persons qualified and available to perform the work. Neither the C&OR nor its sublessees, contractors, subcontractors, or any person acting on behalf of C&OR, sublessee, or any contractors or subcontractors shall, in any manner, discriminate against, intimidate, or retaliate against any employee on account of race, color, religion, sex, age, disability, national origin, or ancestry.

ARTICLE 20 - NOTICES

All notices, requests, demands, directions and other communications (collectively "notices") given to or made upon any party hereto under the provisions of this Agreement shall be in writing (including electronic mail) and shall be delivered or sent by first class, certified,

return receipt requested, or first class express mail or overnight air courier service, or by electronic mail with confirmation in writing mailed first class, in all cases with postage or charges prepaid, to the applicable party, addressed:

If to ORDC:

Executive Director
Ohio Rail Development Commission
Suite 1510, LeVeque Tower
50 West Broad Street
Columbus, OH 43215

If to the C&OR:

President
The Columbus & Ohio River Rail Road Company
136 South Fifth Street
Coshocton, OH 43812

Or, notice may be given to another party and/or at another address in accordance with any unrevoked written direction from any party to any other party hereto. Each such notice shall be deemed to have been given or received on the date sent except when sent by first class express mail or overnight air courier service, in which case on the next Columbus Banking Day thereafter, and except when sent by first class mail, in which case on the third Columbus Banking Day thereafter.

ARTICLE 21 - REMEDIES

No remedy herein conferred upon or reserved by either party is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be, in addition to every other remedy given under the Agreement now or hereafter existing at law or in equity.

ARTICLE 22 - NO WAIVER

No delay or omission to exercise any right or option accruing to either party upon any breach by the other party shall impair any such right or option or shall be construed to be waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed necessary by the non-breaching party.

Further, if any term, provision, covenant or condition contained in this Agreement is breached by either party and thereafter such breach is waived by the other party, such waiver

shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. A written record of such waiver shall be included in the records of this Agreement.

ARTICLE 23 - COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS REQUIREMENTS

The C&OR agrees to comply with applicable federal, state, and local laws and regulations in its performance under this Agreement. In the event that any provision of this Agreement conflicts with any law or regulation, the law or regulation shall prevail.

ARTICLE 24 - SEVERABILITY

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remainder of this Agreement. All provisions of this Agreement shall be deemed severable except that if the savings clause as set forth in Article 30, "Limitations", herein is determined to be invalid, unenforceable or unconstitutional, this Agreement shall terminate.

ARTICLE 25 - NO ABANDONMENT

The C&OR shall not apply for abandonment of or discontinuance of service over any portion of the Rail Property without securing the advance written consent of the ORDC.

ARTICLE 26 - PASSENGER SERVICE

A) In recognition of the potential for rail passenger service on the Rail Property, ORDC encourages the C&OR to promote, develop and support safe and efficient rail passenger service.

B) The C&OR shall exercise the right to provide passenger service on the Rail Property by providing ORDC's Director a written notice Thirty (30) days in advance of any proposed rail passenger service. Such notice shall include, but not be limited to, evidence that C&OR has obtained all necessary Federal or other approvals to operate such service, and the location, times, schedules and dates of any and all passenger trains the C&OR proposes to operate. The C&OR may request blanket approvals from ORDC of certain types or classes of rail service over a specified time period.

C) Upon receiving the request from C&OR to operate passenger service on the Rail Property, ORDC's Director shall respond to the C&OR's request no later than thirty (30) days from ORDC's receipt of such notice. Further, ORDC reserves the right to request that the C&OR change, alter or amend such request so as to protect the public from damage and injury. ORDC reserves the right to reject C&OR requests under this Article; however, such requests shall not be

unreasonably denied. ORDC may deny requests for passenger service on grounds that the C&OR is not in compliance with otherwise applicable safety regulations, or has failed to procure the insurance required in Paragraph "D" hereof.

D) Before approving any C&OR request to operate passenger service, ORDC will require that the C&OR demonstrate to the satisfaction of ORDC that the C&OR has the necessary liability coverage to operate passenger service on the Rail Property. ORDC shall be the Final Arbitor of the amount of insurance C&OR must obtain to operate passenger trains. In addition, the C&OR agrees to indemnify and hold ORDC and Caprail I, Inc. harmless from and against any loss, claim, damage, cause of action, destruction, liability, (including, without limitation, counsel fees) caused by the C&OR's negligent, intentional, willful or wanton actions or inactions, including such actions or the failures to act of any contractors, subcontractors or employees hired by the C&OR including independent contractors.

E) 1) ORDC reserves the right to allow qualified rail passenger and excursion operators other than the C&OR to operate on the Rail Property. ORDC and the C&OR agree that provisions for initiating such passenger and excursion service shall be conducted under the same process and terms as established for other freight carriers using the Rail Property in Article 4, "Non-Exclusive Operations", of this Agreement.

2) ORDC agrees that ORDC, not the C&OR, shall be the party which contracts with said qualified passenger or excursion operator to operate on the Rail Property. ORDC agrees that said operating contract will, as a minimum, provide that:

i) Said qualified operator shall agree to indemnify the C&OR and hold it harmless from and against any loss, claim, damage, cause of action, destruction, or liability (including, without limitation, attorneys' fees) which arises in any way from, during or in connection with said operator's presence on, use of or operation over the Rail Property. ORDC further shall require said operator to provide and maintain insurance against the liability herein described, naming the C&OR as an additional insured, in the amount of at least Ten Million Dollars ($10,000,000). If at any time for any reason said insurance shall lapse, be canceled, or otherwise cease to be in effect, ORDC shall require the qualified operator to immediately vacate the Rail Property and refrain from any use thereof or operation thereover until said insurance is again full effective.

ii) Said qualified operator will abide by special operating terms and conditions concerning radios, telemetry, flagging, and other matters which the C&OR may from time-to-time bring to the ORDC's attention.

3) ORDC agrees that the C&OR will not be compelled to operate or accept for

operation passenger equipment which does not meet passenger car standards as determined by a qualified independent passenger car inspector who shall be selected by the ORDC and the C&OR. Charges of the inspector will be paid by the party offering the passenger equipment for operation. In no event shall passenger equipment which does not meet FRA standards be accepted for excursion operation nor shall equipment which does not meet Amtrak standards be accepted for regular scheduled intercity, commuter, or suburban service.

4) ORDC agrees that the C&OR will not be compelled to provide personnel, equipment, or services for the operation of passenger or excursion service by a third party.

5) ORDC agrees that in its considerations as to whether to allow another operator to conduct passenger or excursion services on the Rail Property, ORDC shall take into account whether that other operator and/or another railroad already sponsoring passenger excursion service on their lines, is willing to allow the C&OR, or its affiliated railroads and companies, to utilize their lines for excursion or passenger services under similar terms and conditions.

6) ORDC will make its good faith efforts to encourage Ohio railroads to allow C&OR to operate excursion or passenger services over their lines as a quid pro quo for other operator(s) seeking to use the Rail Property for passenger or excursion service.

7) Subject to section E (1) of this Article 26, the C&OR and the operator seeking to use the Rail Property will negotiate the compensation to be paid for allowing passenger service but such compensation shall be approximately equal to the actual costs to the C&OR caused by the passenger service on the Rail Property, including a management fee and other C&OR personnel costs. In no event will the C&OR be compelled to subsidize or otherwise underwrite expenses of the passenger or excursion service operator on the Rail Property. ORDC shall be the final arbiter in determining compensation to be paid to the C&OR in accordance with the terms and conditions of this Article 26.

8) In any grant of passenger or excursion service rights to an operator the ORDC will not require the C&OR to pay for or maintain the track at its expense to a higher standard than is noted in Article 10, "Maintenance and Repairs" of this Agreement.

ARTICLE 27 - C&OR CONTRACTS

ORDC recognizes that the effective operation of the Rail Property requires that the C&OR enter into certain contracts for periods of time which may exceed the five year term of this Agreement. The C&OR recognizes that ORDC has an interest in knowing the terms and conditions of said C&OR contracts which may be in effect beyond the termination of this

Agreement.

The C&OR agrees that it shall not enter into contractors beyond the terms of this Agreement unless the contract is assignable, at the option of the successor railroad, to any railroad which may be retained by ORDC to be the contract operator for the Rail Property.

ARTICLE 28 - TERMINATION

A) The C&OR shall have the right to terminate this Agreement at its discretion upon written notification to the Director of ORDC ONE HUNDRED AND EIGHTY (180) DAYS in advance of the C&OR's actual cessation of service. ORDC shall have the right to terminate this Agreement, or any renewal of this Agreement, only in accordance with the provisions Article 6, "Term", Article 18, "Force Majeure", Article 24, "Severability", Article 29 - "Default" or Article 30, "Limitations"of this Agreement.

B) Upon termination or non-renewal of this Agreement for any reason, ORDC agrees that so long as permitted by law, it shall grant to C&OR, or its designee, for a period of not less than ten (10) years, joint rights over the Rail Property for the limited purpose of transporting coal destined for Conesville, Ohio. C&OR or its designee shall obtain such joint rights in accordance with in Article 4, "Non-Exclusive Operations" of this Agreement. The provisions of this Part "B" of this Article 28 shall only apply to coal traffic which the C&OR develops during the term of this Agreement which originates on lines other than the Panhandle.

ARTICLE 29 - DEFAULT

ORDC may notify the C&OR in writing that the C&OR is in default of this Agreement if the C&OR is not performing or complying with any condition or provision of this Agreement including but not limited to the following:

1) The C&OR fails to make any Lease payments as required by Article 7, "C&OR Payments".

2 ) The C&OR fails to provide financial and/or C&OR carloading and gross ton mile/mile information as required by Article 8, "Inspection and Audit".

3) The C&OR makes unauthorized alterations and improvements as defined in Article 9, "Alterations and Improvements".

4) The C&OR fails to maintain track as provided for in Article 10, "Maintenance and Repairs".

5) The C&OR fails to pay taxes as required by Article 11, "Taxes and Assessments".

6) The C&OR sub-leases any of the Rail Property or in any way transfers Controlling interest

of the C&OR in violation of Article 12, "Assignment and Subletting".

7) The C&OR fails to acquire the required insurance, as provided in Article 13, "Insurance and Indemnification", or the required insurance is canceled.

8) The C&OR fails to pay any tax penalties as described in Article 14, "Tax Penalties".

9) The C&OR violates the EEO requirements as provided in Article 19, "EEO Requirements".

10) The C&OR abandons any portion of the Rail Property without the advanced written permission of the ORDC Director as provided in Article 25, "No Abandonments".

11) The C&OR operates passenger service without the Director's approval as provided in Article 26, "Passenger Service".

12) If C&OR is insolvent or files, or consents to the filing against it of a petition for relief or reorganization in bankruptcy or insolvency under the laws of any jurisdiction.

13) The C&OR fails to abide by Article 27, "C&OR Contracts".

In the event that ORDC informs the C&OR in writing of a C&OR default, the C&OR shall have Sixty (60) days to cure the default except that: 1) there shall be no grace period for the payment of any monetary obligations; and 2) for obligations that would be reasonably expected to take more than Sixty (60) days to cure, the C&OR shall begin steps to cure the default within Thirty (30) days and there after make good faith efforts to prosecute same with due diligence so that the cure shall take place in a reasonable amount of time. If C&OR fails to so cure within this period, or pay all monetary amounts when due, then ORDC may terminate this Agreement. In the event ORDC terminates this Agreement, in addition to any other action or remedy which ORDC may have at law or in equity to recover damages or otherwise by reason of breach by C&OR of any provision of this Agreement, ORDC shall have the right to remove C&OR from the Rail Property and take possession thereof by all available legal means, including, but not limited to, the assignment of trackage operating rights to another carrier at ORDC's discretion without regard to Article 4, "Non-Exclusive Operation" of this Agreement, free and clear and discharged of this Agreement and of all right of the C&OR hereunder. C&OR shall pay to ORDC upon demand all fees and expenses, including reasonable attorney's fees, incurred in connection with and in obtaining possession of the Rail Property as aforesaid.

At its discretion, ORDC may request that the C&OR continue operations on the line for an agreed upon period of time after ORDC's termination of this Agreement because of C&OR default to facilitate the orderly change in service from the C&OR to another carrier. Such continued operations shall be governed by the terms of this Agreement but shall not constitute a reinstatement

of this Agreement.

ARTICLE 30 - LIMITATIONS

Notwithstanding anything stated in this Agreement to the contrary, any provision, agreement, condition, understanding, or the like contained in this Agreement which contravenes, violates, conflicts with or is not authorized by the Constitution or Statutes of the State of Ohio shall be void ab initio. It is further understood that if at any time sufficient funds are not appropriated or available to continue funding the payments due under the Lease, this Agreement will terminate on the date the available appropriation expires without further obligation by the State of Ohio. Notwithstanding any other provision of this Agreement, ORDC shall not be required to expend funds under this Agreement unless funds for such purpose are appropriated by the General Assembly and certified as available by the Director of the Office of Budget and Management of the State of Ohio.

ARTICLE 31 - ENTIRE AGREEMENT

This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. No terms shall be altered or otherwise amended except by an instrument in writing signed by each party hereto.

ARTICLE 32 - CAPTIONS

The article captions in this Agreement are for the convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or any part hereof and shall not be considered in any construction hereof.

ARTICLE 33 - CONSTRUCTION

This Agreement shall be construed, interpreted, and the right of all parties determined, in accordance with the laws of the State of Ohio. The parties agree that the exclusive venue for any dispute regarding this Agreement shall be in a court of competent jurisdiction located in Franklin County, Ohio.

ARTICLE 34 - EFFECTIVE DATE

This Agreement shall become effective on July 1, 2002 which will be termed the "effective date".

ARTICLE 35 - ALTERNATIVE DISPUTE RESOLUTION

The parties hereby agree that they will attempt in good faith to promptly resolve any controversy or claim arising out of or relating to this Agreement through negotiation. If a disputed matter cannot be timely resolved between the parties, ORDC and C&OR further agree to pursue the alternative dispute mechanism of mediation, and to share in the costs of the same, to resolve any controversy or claim under this agreement before pursuing litigation.

ARTICLE 36 - DRUG FREE WORKPLACE

C&OR agrees to comply with all applicable state and federal laws regarding drug-free workplace. C&OR shall make good faith efforts to ensure that all of its employees while working on Rail Property will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any manner.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the day and year first above:

ATTEST:

_____

By _____
William A. Strawn II
President
The Columbus & Ohio River Rail Road Company

ATTEST:

_____

By _____
State of Ohio
Ohio Rail Development Commission
Matthew R. Dietrich
Acting Executive Director